Non-compliance and breach: youth justice decision-making in Wales.

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Abstract

Wales' national youth justice strategy has, since 2004, promoted 'children first, offenders second' as a core principle. This is generally viewed as indicative of the efforts of successive Welsh Governments to embed youth justice – a policy area for which they have no legislative competence – into their wider social justice agenda of rights, equity, and well-being. In their latest youth offending strategy, the Welsh Government and the Youth Justice Board Cymru (2014) clearly set out an expectation for all services who interact with children and young people to treat children who have offended and/or are at risk of offending as 'children and young people first'. This study investigates whether, and to what extent, a 'children first' philosophy guides the 'breach practice' of Welsh Youth Offending Teams (YOTs) and Youth Courts. To this end, research was undertaken with two YOTs and their associated Youth Courts between September 2017 and April 2019.

The research reveals little awareness among practitioners and magistrates of the Welsh youth justice strategy. Although most managers were familiar with the phrase, few understood 'children first' as a *philosophy*. While a commitment to addressing children's welfare needs – one of the core principles of a 'children first' philosophy – was evident in most staff's beliefs and practices, this was generally seen as something to be done *alongside* ensuring the child complied with their order, rather than something that was essential to, and had a direct impact on, the child's compliance. Even when welfare needs were acknowledged as a barrier to compliance, breach action was often still justified on the basis that the child's responsibility to comply superseded everything else. Other common justifications for instigating breach proceedings included adherence to the *National Standards*; concerns for 'public protection'; and organisational reputation.

In court, there emerged a clear pattern of children pleading 'guilty' to offences of breaching a statutory order without having properly understood the charge. Children's understanding of the proceedings and outcomes was further impeded by the poor quality of the efforts made by magistrates to engage them. This effective absence of due process, combined with the YOTs' tendency to instigate breach proceedings despite the presence of barriers to compliance, resulted in the 'responsibilisation', criminalisation, and punishment of children for breach offences for which their 'guilt' was doubtful. These outcomes, and the related decisions and processes, seem far removed from the aim and principles of 'children first' youth justice.

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Glossary: key terms used within this study

Breach/ed	This has two meanings, reflecting the ways in which the word is used in the wider literature and by participants in this study: (1) a shorthand for stating that the child has admitted or been found guilty of a 'breach of statutory order' offence (e.g. "he breached his order"). Here, the object of 'breach' is the order. (2) a synonym for "enforce/ment" (e.g. "the YOT breached him"). In this usage, the object of 'breach' is the child.
Breach of statutory order (BSO) offence	A 'breach of statutory order' (BSO) offence is one of "failing without reasonable excuse to comply with the requirements of an existing statutory order" (MoJ and YJB, 2017; MoJ, YJB, HMPPS and YCS, 2020). Statutory orders include, but are not limited to, criminal justice orders (see definition of 'criminal justice orders' on p.ix).
Breach of criminal justice order (BCJO) offence	This term refers specifically to BSO offences where the order breached was a criminal justice order.
Breach history	Shorthand for saying that children had one or more BCJO offence on their YOT record. Children with 'no breach history' had no BCJO offences on their record.
Breach practice	This term encompasses all the decisions made and actions taken by Youth Offending Team staff, Referral Order Panel volunteers, and Youth Court magistrates, in response to instances of non-compliance with criminal justice orders. This may include enforcement ('breach'), but also includes a whole range of other informal and formal responses which may be used before / instead of formal enforcement.

Criminal Justice Orders	Any sentence imposed on a child for a criminal offence which requires the child to comply with one or more statutory requirement in the community, and where the power to enforce the order (i.e. send a child back to court for a breach hearing) rests with the Youth Offending Team. These sentences are: Referral Order, Reparation Order, Youth Rehabilitation Order, Detention and Training Order.
Enforce/ment	This refers to the action of the YOT in instigating formal breach proceedings – that is, returning a child to court for a breach hearing. This should only be done where the instances of non-compliance by the child are deemed 'unacceptable' by the YOT.
Non-compliance	Any event where the child does not comply with the requirements of a criminal justice order (e.g. by missing an appointment or violating a curfew). Instances of non-compliance should not be confused with 'breach'.
National Assembly for Wales	The name of Wales' legislature prior to May 2020. Created by the *Government of Wales Act 1998.*
Senedd	The name of Wales' legislature since May 2020 (changed via the *Senedd and Elections (Wales) Act 2020*). Formerly the National Assembly for Wales.
Welsh Assembly Government (WAG)	The name of Wales' executive until 2014. Prior to 2007 there was no legal separation between the executive and legislature, with the WAG functioning as a committee of the Assembly. The *Government of Wales Act 2006* formally separated the WAG from the legislature. The WAG was later renamed the Welsh Government via the *Wales Act 2014*.

List of abbreviations

CDA 1998	Crime and Disorder Act 1998
CF	Children First
CFOS	Children First, Offenders Second
CMS	Case Management System
DTO	Detention and Training Order
ECM	Enhanced Case Management
EMC	Electronically-monitored curfew
FTE	First-time entrant
ISS	Intensive Surveillance and Supervision
MoJ	Ministry of Justice
NAW	National Assembly for Wales
PCC	Police and Crime Commissioner
UNCRC	United Nations' Convention on the Rights of the Child
UKG	United Kingdom Government
UKP	United Kingdom Parliament
WAG	Welsh Assembly Government
WG	Welsh Government
YJB	Youth Justice Board for England and Wales
YJB Cymru	Youth Justice Board (Welsh branch)
YOT	Youth Offending Team
YRO	Youth Rehabilitation Order

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Candidate declaration

This is to certify that, except where specific reference is made, the work described in this thesis is the result of my own research. Neither this thesis, nor any part of it, has been presented, or is currently submitted, in candidature for any other award at this or any other University.

Signed H. Ll. Daniel

Candidate

Date 26.01.2021

An introduction to the thesis.

Introduction: initial considerations

This thesis investigates the extent to which breach practice[1] in Welsh Youth Offending Teams and their associated Youth Courts is consistent with a 'children first' philosophy. To this end, it is first necessary to articulate what is meant by a 'children first' philosophy of youth justice. In this brief introduction, some key considerations in relation to the idea of 'children first' are highlighted before turning to the concept of 'breach'.

(a) Children First

'Children first', or rather 'children first, offenders second', has been a strapline of the Youth Justice Board Cymru and successive Welsh Governments' vision for youth justice since publishing their first joint youth offending strategy in 2004 (e.g. WAG and YJB, 2004, 2009; Welsh Government and YJB, 2014). Until recently, this emphasis on centring the child in youth justice responses has been in sharp contrast to the enduring message from the UK Government – that is, the primary business of the Youth Justice System (YJS) is to hold children accountable for their offences, thus emphasising the 'offender'. This position is captured well in the Ministry of Justice's response to Charlie Taylor's review of the YJS. Here they state that they are committed to "improv[ing] standards" through ensuring that the system does "not only punish crime" but also "intervene[s] earlier to prevent crime and reform offenders to stop further crimes being committed" (Ministry of Justice, 2016:3).

More recently, however, 'children first'[2] has started to permeate youth justice on a jurisdictional (England and Wales) level. In 2015, the National Police Chiefs' Council included 'children first' as a key principle in their policing strategy, notably entitled *Child-centred Policing* (NPCC, 2015). In 2018, the Youth Justice Board for England and Wales (YJB) formally adopted 'children first' as a fundamental value (YJB, 2018a). This was consolidated in 2019 with the publication of the new *Standards for children in the youth justice system* which identified 'children first' as the 'guiding principle' of the YJB. These *Standards* set out what youth justice services should do to ensure their work is consistent

[1] This term encompasses all the decisions made and actions taken by Youth Offending Team staff, Referral Order Panel volunteers, and Youth Court magistrates, in response to instances of non-compliance with criminal justice orders. This may include enforcement ('breach'), but also includes a range of other informal and formal responses which may be used before/ instead of formal enforcement (see Glossary).

[2] Used interchangeably with 'children first, offenders second', or 'child-centred' / 'child-friendly' youth justice.

with this principle (MoJ and YJB, 2019a). This endorsement of 'children first' by the YJB is perhaps unsurprising, given that it occurred under the tenure of Charlie Taylor as Chair, who, in the aforementioned review of the YJS, called for a "shift in the way society, including central and local government, thinks about youth justice so that we see the child first and the offender second" (Taylor, 2016:3). However, the fact that the Ministry of Justice has sanctioned these *Standards* also suggests, at the very least, a diminishing resistance to the notion of 'children first' youth justice within the UK Government.

Despite this recent surge in the popularity of the phrase 'children first (offenders second)', it is not at all clear that the various parties promoting it share a common understanding of its meaning and implications for youth justice procedures and practice. Insofar as it cautions against labelling children as 'offenders', there has been a consistent response. In line with the approach taken in Wales since the first devolution settlement in 1998, most of the major institutions who issue policies and guidance on youth justice – including the Youth Justice Board, the Sentencing Council, and the National Police Chiefs' Council – are now consistent in their rejection of the term 'young offenders' in favour of 'children' and/or 'young people'. Even the UK Government – who stubbornly persisted with the use of the term 'young offenders' in their response to the Taylor's review – appear to be changing their vocabulary, as indicated by the recent White Paper on sentencing reform (Ministry of Justice, 2020). However, this surface-level uniformity across the various institutions does not extend to 'children first' on a more fundamental level – i.e. what it is, what it aims to achieve, and what are its enablers.

For many academic commentators, 'children first' refers to an 'approach' or 'model' of youth justice which is *philosophically distinct* from other dominant paradigms which have framed youth justice policy and practice in England and Wales (e.g. Haines and Drakeford, 1998; Haines and Case, 2015; McAra, 2018; Smith and Gray, 2019). Broadly, these other paradigms have been characterized as 'welfarism'; 'just desert'; 'actuarialism'; and 'restoration' (see, e.g. McAra, 2010; Muncie, 2011).[3] Each of these paradigms, it is argued, implies a particular understanding of the causes of young people's offending behaviour and constructions of children and 'childhood' (Smith, 2014). These beliefs contribute to shaping a *philosophy* of youth justice, which should inform, guide, and give meaning to all decisions and interventions with children in conflict with the law

[3] 'Diversion' and 'minimum intervention' have also been identified as distinct 'models' of youth justice (see e.g. Cavadino and Dignan, 2006, Haines and Case, 2018), although they have also been characterized - more accurately, in this researcher's opinion – as 'strategies' or enabling principles of 'children first' youth justice practice (Haines and Drakeford, 1998; Haines and Case, 2015). However, it is worth noting here that the 'minimum intervention' strategy as employed by 'children first' refers to formal, criminal justice interventions; it is not the same as the 'radical non-intervention' thesis which became a prominent influence on practice in the 1980s England and Wales (see discussion in Chapter 1).

(Haines and Drakeford, 1998). While there are some differences between various accounts of 'children first' in terms of the specific principles they promote, the overarching aim appears to be largely consistent: promoting social justice in children's lives (e.g. Haines and Drakeford, 1998; Drakeford, 2010; Haines and Case, 2015; McAra, 2018; Phoenix, 2018; Smith and Gray, 2019; Gray, 2019; Bateman, 2020).

Thomas' investigation into practitioner culture in two Welsh and two English Youth Offending Teams, however, suggests that 'children first' has not necessarily been understood by practitioners in this way. One clear indication of this was the need perceived by some practitioners to discriminate between the treatment of children based on the seriousness of their offences: "it was questioned whether a genuinely 'children first' approach could still be taken when serious offences had been committed… offending behaviour could not always simply be excused on the grounds that the perpetrator was a child" (Thomas, 2015:187). Thomas' findings have raised significant questions about the way in which 'children first' is interpreted and operationalized by youth justice practitioners, such that some academics have questioned whether, in some areas at least, 'children first, offenders second' reflects a mere "branding exercise rather than a paradigmatic shift" (Evans et al., 2017:14).

Of course, it is important to note that Thomas' study captures views from only four YOTs and therefore, as acknowledged by the author, cannot be assumed to be representative of all YOTs in England and Wales. A more recent study of English YOTs suggests that some youth justice services are operating a model of practice based on a 'children and young people first' philosophy which "prioritiz[es] the well-being of children, irrespective of their involvement in criminal behaviour" (Smith and Gray, 2019:562; see also Byrne and Case, 2016). These youth justice services locate offending behaviour within individuals' wider personal and social situations and as such, offer their services to all disadvantaged children, not just those who offend (*ibid.*). Even in these services, however, it has been argued that children's problems tend to be attributed to individual and family deficits, with little attention given or action taken to confront structural disadvantage and inequalities (Gray, 2019).

How YOT staff and Youth Court magistrates interpret 'children first' is an important part of this investigation into breach practice. It seems reasonable to suggest that in the absence of a clear understanding of the philosophical underpinning of the statement 'children first (offenders second)', practitioners' interpretation of the phrase and hence its impact on youth justice practice is likely to vary. This is not least according to their own views of childhood and the causes of children's offending, and the associated ideas of

responsibility, structure, and agency. Given that this study focuses on Welsh YOTs and Youth Court magistrates, it is necessary first of all to consider what constructions of children / childhood, youth offending, and social justice are reflected in Welsh social policy and youth justice strategies, since these provide an essential context for interpreting the statement 'children first, offenders second' in Wales (see Chapter 1).

(b) Breach

An initial consideration of the (very limited) literature on breach in the youth justice system (YJS) suggests that the *formal* breach process for 'enforcing' criminal justice orders might be difficult to square with a 'children first' philosophy, if the latter is understood as being concerned with promoting social justice in the lives of children. This is so because of the risk of harm to children which is inherent to the breach process. For example, concerns have been raised about the link between breach and custodial sentences (Hart, 2010 and 2011; Bateman, 2011). Although these studies were published a decade ago and the custodial estate has shrunk considerably since then (MoJ and YJB, 2020a), the imposition of a custodial sentence for a 'breach of statutory order' offence remains a sentencing option and therefore a relevant concern.

However, the concern that the breach process may harm children extends beyond the possibility of a custodial outcome. It has been argued (e.g. McAra and McVie, 2007) that being subjected to formal justice processes such as court hearings can constitute a harmful experience in its own right – regardless of the formal outcome of the hearing. Following the arguments of Becker (1963) and Lemert (1951) in the development of Labelling Theory, McAra and McVie (2007) maintain that regular contact with the formal criminal justice system may effectively assign the label of "offender" to the child, a label which some young people, in the absence positive counter-influences, might internalize. Among a range of other negative consequences, this might result in increased criminal activity by these young people, due to their self-perception as "offenders". This identity may be reinforced by agents within and outside the YJS if they focus on the young people's offences to the detriment of their strengths and wider needs. On this view, being breached (i.e. sent back to court for a breach hearing) *per se*, regardless of the hearing outcome, may be detrimental to the child's well-being and life chances.

Another way in which the breach process may be harmful relates to the fairness and legitimacy – perceived and actual – of the process and outcome (Hart, 2011; see also Robinson and McNeill, 2008, 2012; Bottoms, 2001). Hart's study (2011) raised concerns

over children being 'set up to fail' by the imposition of stringent statutory requirements which failed to take into account the children's circumstances and *ability* to comply with the requirements, exacerbated by a rigid application of *National Standards* by YOT workers (see also Bateman, 2011). By failing to address the barriers to children's compliance, children who are breached for non-compliance may end up being punished for being subjected to circumstances which they have no power or capacity to change. This would not only be unfair; it would also subject children to further experiences of 'failure' which may reinforce a negative self-perception. It could also undermine the child's intention or desire to comply in future.

That said, the breach process is not limited to actual enforcement (breach). In fact, the first decision that Youth Offending Team (YOT) practitioners must make in the event of non-compliance by a child is whether there is an 'acceptable' reason for it (MoJ and YJB, 2013).[4] To this end, YOTs have considerable scope for exercising 'professional discretion' when making such a decision. Whether, and to what end, this discretion is used by YOTs, forms part of this investigation.

Rationale for the study

> "The process of breach in community supervision is by far the most important criminological issue that you never read about."
>
> (Maruna, S. in Boone and Maguire, 2018)

This quotation summarises the first rationale for this study: breach processes and practice are heavily under-researched (see also Ugwudike, 2011, 2012; Robinson and McNeill, 2008, 2012). This is not to say that breach is a topic which has been ignored by academics: in the UK, an extensive body of literature on the supervision of 'offenders' in the community has necessarily explored the role and implications of (non)compliance and enforcement practice (e.g. Bottoms, 2001; Deering, 2011; Robinson and McNeill, 2008; Ugwudike, 2011; Ugwudike and Raynor, 2013). Rather, the view is that the extreme variation between and within jurisdictions in breach procedures, decision-making, and outcomes, demands a detailed examination of these diverse breach processes and practice (Boone and Herzog-Evans, 2013).

While Boone and Maguire's (2018) publication goes some way to rectifying this deficiency, its scope is limited to breach processes and practice with adults in the criminal

[4] According to the *National Standards* which were operational during the data collection phase of this investigation.

justice system. To this researcher's knowledge, there has been no equivalent comparative analysis of breach processes and practice in juvenile justice systems. In relation to the Youth Justice System (YJS) in England and Wales, specifically, there is a dearth of literature on breach. Only one study has focused exclusively on influences on non-compliance and YOT breach practice – a two-part study led by Hart in 2010-11 (Hart, 2010; 2011a; 2011b). A handful of other studies have explored issues relating to breach, such as Grandi and Adler's (2016) study of the 'criminogenic' factors and socio-demographics of young people who breach their orders; and Bateman's (2011) article on the attitudes of practitioners towards breach and enforcement pre- and post-'punitive turn'. Thomas' (2015) comparative study of Youth Offending Team cultures and practice in England and in Wales also considers practitioners' attitudes towards compliance, breach and enforcement, and Field (2007) touches upon the attitudes of practitioners in Welsh YOTs towards breach. The scarcity of research on the topic of non-compliance and breach is therefore a valid rationale for pursuing this investigation into breach practice.

However, the second rationale for this study relates to its contextualisation within the 'children first' discourse. Given the inherently value-laden nature of the statement 'children first (offenders second)', it implies, at the very least, a principled approach to youth justice practice. This means that whatever the specific principle/s of 'children first', they should apply to *all* decisions concerning the children in the YJS. What better way, then, to see if and how a 'children first' philosophy has permeated practice, than by focusing on the decisions made when things 'go wrong' – i.e. when children fail to comply with their orders?

Research Aim and Questions

The principal aim of this research is to establish whether, and to what extent, breach practice in Welsh Youth Offending Teams is underpinned by a 'children first' philosophy. Four related questions guide the study:

1. How can the notion of 'children first' youth justice be understood in the context of Welsh policies, and how is it interpreted by Youth Offending Teams and Youth Court magistrates in Wales?

2. What influences children's (non)compliance with criminal justice orders?

3. How do Youth Offending Teams and Youth Court magistrates respond to non-compliance with criminal justice orders, and what guides their decisions? Specifically, is there any evidence of a 'children first' philosophy underpinning their decisions?

4. What impact do these decisions have on the children concerned, and what are the implications for youth justice locally and nationally?

Scope of the study

1. **Type of breach:** This study investigates breach practice in relation to non-compliance with *criminal justice orders* in the Youth Justice System – i.e. Reparation Orders, Referral Orders, Youth Rehabilitation Orders, and Detention and Training Orders (see Glossary for explanation of key terms). It does not investigate the processes and decision-making relating to other types of 'breaches', namely: breach of Youth Conditional Caution (a pre-court disposal); breach of bail; breach of conditional discharge; and breach of a civil disposal. The reason for this is that the way in which each 'breach offence' arises; the implications of the breaches; and the role of the YOT in the process, differs according to each type. While every form of 'breach' is worthy of investigation, this study is deliberately limited to enable an in-depth investigation into breaches of criminal justice orders.

2. **Recall:** Although the 'recall' process for longer-term custodial sentences imposed by the Crown Court shares a similarity with the breach process for criminal justice orders, it does not form a part of this investigation. The reason for this is that unlike the breach process for 'enforcing' criminal justice orders, there is only one outcome for recall: going back to custody. Therefore, whereas the breach process for criminal justice orders can be understood as a way of attempting to 'enforce' children's compliance *in the community* (despite there being a risk of a custodial sentence as an outcome), the recall process has no such aim. Moreover, recall proceedings do not require the child to appear in court before s/he is returned to custody: subject to the Offender Management Public Protection Group's approval of the YOT's recall request, the YOT will be issued with revocation of licence for the child's immediate arrest. Unlike breach hearings, the child has no part to play in the review of the recall request. That said, the guidance states that "only major

breaches of licence conditions" should lead to a recall request, which suggests that there are informal ways of dealing with 'minor' breaches and that YOTs can exercise discretion here too (YJB, 2019b: section 6.18).

3. **Courts:** Although this study focuses on YOTs and *Youth* Courts, it must be acknowledged that Crown Courts, as well as Youth Courts, can and sometimes do impose Youth Rehabilitation Orders (YRO) and Detention and Training Orders (DTO) and, in some circumstances, Referral Orders (see *Referral Order Guidance*, MoJ and YJB, 2018). One limitation of this study is that it does not consider any potential differences in breach decision-making between Youth Court magistrates and Crown Court judges. This may be an area for future investigation. That said, it is common for breach proceedings to be dealt with by the Youth Court even when the original order was imposed by the Crown Court. Where a DTO is imposed in a Crown Court, the judge must explain to the child that "Failing to co-operate with supervision, he/she may be taken before the Youth Court…" (Judicial College, 2019: section 4:37). As for YROs, Schedule 1 (para.36) of the *Criminal Justice and Immigration Act 2008* provides that "where the Crown Court makes a youth rehabilitation order, it may include in the order a direction that further proceedings relating to the order be in a Youth Court". Taken together, this suggests that the majority of youth breaches are likely to be dealt with in the Youth Court.

Structure of the thesis: an overview.

The thesis is organised as follows:

Chapters 1 and 2 present a review of existing academic literature, research, legislation (where relevant), policies, and guidance in relation to the idea of 'children first' youth justice, and the concept and practice of breach. **Chapter 1** illustrates that 'children first' is a contested concept which lacks an agreed-upon definition. Given that this investigation seeks to establish whether, and to what extent, breach practice is underpinned by a 'children first' philosophy, it is necessary to establish a working definition of this philosophy. By exploring how 'children first' has been characterised and developed by various parties – academics, practitioners, policy-makers, and international human rights organisations – the chapter identifies what may reasonably be considered the overarching

aim and core enabling principles of a 'children first' philosophy of youth justice in Wales. This working definition will be used as a tool of analysis throughout the thesis.

Chapter 2 explores the concept, and process, of 'breach' in the Youth Justice System. In attempting to elucidate how breach might be understood and exercised in a manner consistent with the working definition of 'children first' presented in the first chapter, the notion of 'compliance' itself is interrogated. What does compliance with criminal justice orders look like? Why is it important, and what influences (non)compliant behaviour? Crucially, whose responsibility is it when a child fails to comply? The purpose of breach is also considered, drawing on literature from probation as well as wider youth justice literature. Acknowledging that breach *practice* by YOTs and Youth Court magistrates is influenced by more than interpretations of the causes of non-compliance and of the purpose of breach, the chapter then critically examines the legislation and guidance which shape the breach process.

Chapter 3 discusses the strategy, design and research methods employed to address the research questions. This includes the justifications for using various sampling strategies; the ethical considerations and barriers which were encountered during the data collection phase of the study; a discussion of the way in which the data were analysed; and a reflection on the limitations of the research design and implementation.

Chapters 4, 5 and 6 present the study's findings, based on analyses of the data collected between September 2017 and April 2019.[5] The findings presented in **Chapter 4** are predominantly quantitative. They provide an overview of the youth justice histories and socio-demographics of the children who were subject to criminal justice orders in the two Youth Offending Teams who participated in the study, comparing children who had breached at least one order with those who had never breached an order. The official statistics on breach in the YJS are also scrutinised and challenged in this chapter, exposing the manifold limitations of the data which question their reliability, accuracy, and sufficiency.

Chapter 5 discusses the various factors influencing (non)compliance which the young people who participated in the study identified. Here, intrinsic and extrinsic barriers to compliance are discussed. Extrinsic barriers arose from the young people's circumstances or states, such as instability of accommodation, substance misuse, mental ill-health. Examples of barriers which were intrinsic to the YOTs/courts include the content and delivery of specific statutory requirements, the quality of the relationship

[5] Note that the data collection was completed prior to the introduction of the most recent edition of the *National Standards* (MoJ and YJB, 2019) – i.e. before 'children first' was endorsed by the YJB as the 'guiding principle' of youth justice services in England and Wales.

between supervisors and young people, and the nature of the formal youth justice proceedings. The mechanisms which YOT staff used (to a greater or lesser degree) to promote compliance or engagement are also discussed, showing that staff were more likely to recognise, acknowledge, and attempt to address extrinsic barriers to compliance than intrinsic ones.

Chapter 6 focuses on the nature and rationale of the YOTs and magistrates' breach decisions. Key themes which were identified by YOT staff, volunteers, and magistrates as being influential on their breach decisions are discussed. This is followed by examples of breach practice drawn from children's case files which highlight further issues which were not identified in conversation with the staff or young people.

Chapter 7 summarises and interrogates the main findings of the study. In so doing, it considers the findings in relation to the academic and empirical research literature presented in Chapters 1 and 2. It highlights where the findings of this investigation confirm, challenge, or modify the key messages presented in the review of the literature.

The **Conclusion** of the thesis revisits the research questions and offers some concluding thoughts about the implications of this research for future youth justice policy and practice.

Chapter 1: 'Children first' youth justice in policy, practice, and academic writing.

1.0 Introduction

The statement 'children first, offenders second' first acquired a formal status in Wales when, in 2004, it was incorporated into the *All Wales Youth Offending Strategy* as a central principle (WAG and YJB, 2004). Since then, it has been the effective slogan for successive Welsh Governments' vision for youth justice. This has been in contrast to the narrative coming from the UK Government which depicts young people who have offended as 'offenders first' (rather than children first) who must be held accountable for their behaviour and punished in order to 'reform'. The incorporation of the principle 'children first, offenders second' into the 2004 strategy can be understood as an attempt by the Welsh Assembly Government[6] to embed youth justice – a policy area for which they have no legislative competence – into their wider social justice agenda of ensuring rights, equity and well-being. However, it was not at all clear what the practical implications of this statement were for youth justice professionals (Haines and Case, 2015).

The latest Welsh youth justice strategy offers more clarity, identifying key principles for the purpose of treating young people who have offended or are 'at risk' of offending as 'children and young people first' (Welsh Government and YJB, 2014). Some, but not all, of these principles are reiterated in the recent *Youth Justice Blueprint for Wales* (MoJ and Welsh Government, 2019). The Youth Justice Board for England and Wales (YJB) have also recently identified a set of principles designed to aid the achievement of 'children first' youth justice practice in their revision of the *National Standards* – the *Standards for children in the youth justice system* (MoJ and YJB, 2019). Elsewhere, academics, campaigning groups and international human rights institutions have offered their own take on what constitutes 'children first', or 'child-friendly' youth justice. While there are similarities between all these versions, there are some key differences too.

Clearly, 'children first' is a contested concept which lacks an agreed-upon definition. Given that this investigation seeks to establish whether, and to what extent, breach practice is underpinned by a 'children first' philosophy, it is first necessary to establish a working definition of 'children first'. As such, this chapter explores how 'children first' has been characterised and developed to identify what may reasonably be

[6] The Welsh Assembly Government was renamed 'Welsh Government' in 2014 – see Glossary. See also Appendix 1 for summary of key developments in the process of Welsh devolution.

considered the overarching aim and core enabling principles of a 'children first' philosophy of youth justice. The Welsh context is emphasised, especially the framing of 'children first' within the wider social policy agenda, in which children are considered to be 'young citizens' with fundamental rights and universal entitlements. However, it is important to acknowledge that the idea of 'children first' youth justice predates Welsh devolution and has been developed and applied by academics and practitioners independently of any national policy context. As such, the chapter draws on multiple sources of information, including academic texts, campaigning material, and international rules / guidelines, as well as the Welsh strategies.

Section 1.1 provides an overview of the origins of the 'children first' philosophy as articulated by Haines and Drakeford (1998) and summarises its main components and rationale. It then considers how 'children first' has been subsequently characterized and developed, highlighting the commonalities and differences between various accounts. It demonstrates that while there are some variations in the enabling principles which are specified, some principles are common to all accounts, and the overarching aim of 'children first' appears to be largely consistent: promoting social justice in children's lives.

Section 1.2 discusses the promotion of 'children first' in Wales by interrogating key social policies; the youth offending strategies and blueprint; and two 'models' of youth justice practice developed and implemented in Wales (the *Bureau* and *Enhanced Case Management*). In this section, some inconsistencies and contradictions in the representation and application of 'children first' in Wales emerge, which, it is argued, obscure its meaning. It is not assumed that the existence of a clear and consistent representation of 'children first' in national policy will translate into practice at a local and individual level. The impact of decentralization and local priorities, as well as organisational cultures and professional identities are but a few variables which may affect the way in which a policy is interpreted and operationalized. Nonetheless, it *is* argued that its absence reduces the likelihood of achieving the aim of 'children first' nation-wide.

Section 1.3 considers what is already known about the way in which 'children first' has been interpreted and implemented (or resisted) by Youth Offending Teams (YOTs). Thomas' investigation into YOT practitioner culture strongly suggests that 'children first' was not understood then as a philosophy, but rather an optional approach to working with children whose offences were not 'serious' (Thomas, 2015). This is in contrast to findings from more than a decade earlier (Cross et al, 2003), where the researchers detected a determination among practitioners in Welsh YOTs to 'preserve' a 'children first' philosophy in spite of the challenges presented by the *National Standards*. This suggests

that there may have been a weakening of 'children first' ethos within YOTs. That said, a more recent investigation into the practice models of English YOTs suggests that some YOTs do operate a 'children and young people first' model of youth justice (Smith and Gray, 2019). The fact that these YOTs are in England, where the UK Government's risk-centred and 'responsibilising' youth justice policies were not, at the time, tempered or challenged by 'children first' national strategies (as in Wales) or the latest *National Standards*, is indicative of the significant scope for YOTs and/or local authorities to pursue a 'children first' model of practice despite the UK Government's policy position.

Section 1.4 concludes the chapter with a working definition of 'children first' which will be used as a tool of analysis throughout the remainder of the dissertation.

1.1 The idea of 'children first'

'Children first' was first articulated as a philosophy of youth justice by Haines and Drakeford in 1998, prior to the onset of the so-called 'new youth justice' (Goldson, 2000; see also Pitts, 1999). According to the authors:

> "The overarching objective of youth justice practice must be to see all children and young people under the age of 18 years treated as children… This philosophy should inform, guide and shape all that youth justice workers do in and for children in the criminal justice system." (Haines and Drakeford, 1998:89)

The authors are clear that treating these young people *as children* is not to deny or disregard their agency. Rather, it means recognising that they ought to be treated differently from adults "and in a separate manner which recognises the special status accorded to them because of their youth" (*ibid.*). Key characteristics of children's "special status", or of childhood, include: their relative immaturity and reduced ability to make fully informed moral judgements; their very limited capacity to influence their social situation and the choices available to them within it; and their dependency on adults for almost all the key necessities of life (see also Drakeford, 2001).

Contrary to the assertions made by the Labour Party prior to and after their election in 1997, the authors argue that children should not be 'responsibilised' – that is, treated as if they are wholly and entirely responsible for their actions (Garland, 1996; see also Goldson, 2001; Muncie, 2006). It is clear, they argue, that children's relative immaturity and its impact on their decision-making capabilities is recognised in other areas of social

policy such as health, education, and child/family welfare. This is evidenced by the deliberate legal restrictions imposed on children to protect them from harm and to ensure that decisions are made in their best interests. Haines and Drakeford argue that to deny autonomy and responsibility to children in most aspects of civil life while simultaneously assuming them to possess a mature understanding of their behaviour, including its impact on others, is contradictory (Haines and Drakeford, 1998:17-18).[7]

Further, the authors contend that offending behaviour cannot be viewed in isolation from their wider social environment. They point out that significant welfare deficiencies or 'unaddressed needs' are a common feature in the lives of many young people who are charged with criminal offences. These include but are not limited to: inadequate housing, unemployment / school exclusions, poor health, violence and abuse, and a general lack of opportunities to participate in leisure activities and/or to develop interests and hobbies. Children are not responsible for these disadvantages and have little or no capacity to change their circumstances, yet these circumstances do have a significant impact on the choices available to them. The authors contend that the children's limited choices must be acknowledged and that they and their families ought to be provided with the necessary support to improve their life chances and the positive choices available to them.

What the authors mean, then, by the statement that youth justice practice must treat all children and young people under the age of 18 *as children* (see previous indented quote), is that youth justice workers must strive "to improve the social situation of young people and to maximise their chances both now and in the future." (*ibid.*, p.xiv). In other words, they must promote social justice in children's lives.

How do the authors propose that this should be achieved? What are the enabling principles of this philosophy? In articulating these principles, Haines and Drakeford draw on the juvenile justice practices of the 1980s – a period of so-called 'new orthodoxy' in youth justice practice (Jones, 1984, cited in Haines and Drakeford, 1998). This decade witnessed a practitioner-led 'anti-custody' movement which saw a drastic reduction in the number of young people sentenced to custody. This movement aimed to reverse the trends of the previous decade which saw more and more young people receiving custodial sentences, partly due to the "zealous pursuit of treatment" which resulted in a vast expansion of the numbers of young people being drawn into the system, often through child welfare routes, and increasingly interventionist sentences being imposed on children for relatively minor offences (Haines and Drakeford, 1998:39).

[7] This argument is, of course, central to the wider discourse on the minimum age of criminal responsibility.

The juvenile justice workers who led the anti-custody drive in the 1980s were heavily influenced by particular academic findings and beliefs derived from social work practice. These concerned the nature of youth crime and the impact of involvement in the criminal justice system on young people, and may be summarised as follows:

- much youth crime is of a 'trivial' nature and is widespread during adolescence – i.e. it is a 'natural' part of development and most young people will naturally 'grow out' of offending as they mature;
- the process of stopping offending (now commonly referred to as desistance) is likely to be impeded by involvement with the criminal justice system due to the impact of 'labelling' in creating an 'offender' identity, and further exacerbated by exposure to older and more criminally-sophisticated peers[8] and the practice of 'up-tariffing' within the system;
- welfare-based approaches – or rather, the pursuit of a 'treatment' model of welfare[9] - leads to net-widening, subjecting increasing numbers of young people to the harms of the criminal justice system;
- therefore, the best thing juvenile justice workers can do, to avoid the harm done by the criminal justice system and its sanctions, is to leave young people alone (the 'radical non-intervention' thesis).

In practice, this meant that juvenile justice workers aimed to maximise the number of decisions made to divert children away from the criminal justice system and to reduce the number of custodial sentences imposed on those who remained in the system.

Maximum diversion and minimum custody are central principles of the 'children first' philosophy articulated by Haines and Drakeford. However, while these principles are necessary for minimising harm, the authors argue that they are insufficient to achieve the aim of maximising socially just outcomes for children. They highlight the risks of 'radical non-intervention' when applied in a landscape in which services to young people were cut and universal services eviscerated. Diversion from the criminal justice system *alone* would result in young people's needs remaining unmet. Thus, another principle of the 'children first' philosophy is that juvenile justice workers must protect and act in the child's best interests *not only* by protecting them from harm, but also by "positively securing access to

[8] The authors refer to custody as the prime setting for this but clearly this applies to young people on community sentences too, e.g. where they are required to undertake groupwork.
[9] It is important to acknowledge that there are different models of child welfare. Fox Harding (1991) identified four distinctive value positions on child welfare: (1) state paternalism / child protectionism, (2) patriarchy and laissez-faire, (3) 'the defence of the birth family and parents' rights' (i.e. family support), and (4) children's rights.

services etc. that promote the health, well-being and future prospects of children" (Haines and Drakeford, 1998:91).[10] Crucially, children should never be prosecuted because of welfare needs – these should be dealt with through mainstream social welfare services. The authors argue that "where society, its structures and institutions, fails children, this must be made clear" (*ibid*., p.xiv). When children are prosecuted and convicted, sentences should reflect the seriousness of the offence while placing the offending within its social and individual context. Moreover, interventions and supervision in the community should not be punitive. They should reflect the relative immaturity of young people; take account of their (often deprived) circumstances; and crucially, invest in them for the future.

To summarise, the 'children first' philosophy articulated by Haines and Drakeford (1998) can be characterised as possessing the overarching aim of promoting social justice in children's lives, achieved through implementing the following principles:

- minimising harm (through maximising diversion from the formal system and from custody; minimum criminal justice intervention; and avoidance of retribution as a rationale for intervention);
- maximising positive outcomes (both within the context of criminal justice interventions, but also through mainstream social welfare / education services);
- proportional sentencing;
- tailoring interventions to the needs and circumstances of the individual child;
- holding services accountable for delivering children's rights as enshrined in the *United Nations' Convention on the Rights of the Child* (UNCRC).

Subsequent iterations of 'children first' have built upon these foundations, bolstered by findings from the fields of child development and neuropsychology (e.g. Anderson et al., 2001; Blakemore and Choudhury, 2006; see also Delmage, 2013); further empirical evidence confirming the 'routineness' of offending among adolescents and the deleterious impact of system contact on the process of desistance (e.g. McAra and McVie, 2007, 2010; Petrosino et al., 2010); and emerging evidence about the multiple barriers faced by young people whose offending is 'prolific' and/or 'serious' – including experiences of long-term structural disadvantages and underlying trauma (e.g. Johns et al., 2018; Skuse and Matthew, 2015).

[10] This is in line with Hohfeld's (1913 and 1917) idea of 'claim rights': adults are not only obliged to avoid interfering with the right holder's (child's) entitlement to enjoy their rights, but also have a duty to actively aid children to secure their rights.

Central to accounts of 'children first' is the promotion of children's welfare/well-being and their 'best interests'. These are frequently cited as fundamental principles of 'children first' youth justice (see e.g. Cross et al., 2003; Thomas, 2015; Smith, 2014; NAYJ, 2019; McAra, 2018; Smith and Gray, 2019). This is in line with multiple international human rights instruments such as the UNCRC – "In all actions concerning children… the best interests of the child shall be a primary consideration… States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being," (Article 3); the 'Beijing Rules' – "[youth justice] proceedings shall be conducive to the best interests of the juvenile" (Rule 14.2) and "The promotion of the well-being of the juvenile is of paramount consideration" (Rule 24); and the Council of Europe's *Guidelines* on child-friendly justice – "Member states should guarantee the effective implementation of the right of children to have their best interests be a primary consideration in all matters involving or affecting them" (Fundamental Principle 2, Council of Europe 2010:18).

The concern with promoting children's welfare is distinct from the 'welfarism' of the 1970s alluded to earlier. This 'welfarism' was highly interventionist and paternalistic, conceiving of children as 'objects of concern' (Butler-Sloss, 1988; Parton et al., 1997; cited in Cross et al. 2003) whose vulnerabilities and needs should be addressed through the imposition of intrusive welfare interventions with little regard for their rights and agency. By contrast, the perspective of welfare promoted by proponents of 'children first' is heavily rights-centred, akin to a combination of the 'children's rights' and 'family support' versions of child welfare identified by Fox Harding (1991; see also Smith, 2018). In other words, supporting children and their families to access their social rights (Drakeford, 2000). Central to this is securing children's participation rights. As is made explicit in the aforementioned human rights instruments, acting in the 'best interests' of a child necessarily requires seeking the child's views and taking them into account. Thus, meaningful participation is frequently cited as a core principle of 'children first'.

Recently, Smithson et al. (2020) have contended that seeking children's active participation in youth justice decision-making and processes is insufficient for the purpose of ensuring that the system is truly child-centred, as per the intention of 'children first'. They call for a "wholescale system redesign" which is co-produced with young people in order to develop youth justice practice that is "inherently void of barriers to participation, and consequently young-person centric" (p.2). They identify six principles of 'young person-centric' youth justice practice which were co-produced with young people involved with English YOTs: 'let [the young people] participate'; 'always unpick why';

‘acknowledge limited life chances’; ‘help problem solve’; ‘develop ambitions and options’; and ‘afford them a fresh start’.

Parallels can be drawn between these principles and ones found elsewhere in the wider ‘children first’ and ‘effective practice’ literature. For example, ‘always unpick why’, ‘help problem solve’, and ‘develop ambitions and options’ resonate with the evidence-based ‘core correctional practices’ summarised by Ugwudike and Morgan (2019; see also Chapter 2, section 2.2.2). The principle of affording children a fresh start reflects calls by advocates of ‘children first’ to reform the criminal records system (e.g. NAYJ, 2019; Haines and Case, 2015). And, as previously discussed, an acknowledgement of the limited life chances of many children charged with criminal offences is one of the underpinning rationales for a ‘children first’ philosophy (Haines and Drakeford, 1998), hence the emphasis on striving to maximise socially just outcomes.

In line with Haines and Drakeford (1998), subsequent accounts of ‘children first’ promote the principles of maximum diversion *from* criminal justice processes and *into* universal mainstream service provision (e.g. Byrne and Case, 2016; Smith and Gray, 2019; McAra, 2018; NAYJ, 2019; Case and Haines, 2015). This seen as essential for minimising harm and maximising positive outcomes and is clearly contingent on strong partnerships between the various relevant agencies. The principle of service accountability for ensuring that children can access their rights *without discrimination* is also prominent, often referred to as the ‘responsibilisation’ of adults (Haines and Case, 2015; Evans et al. 2017; Bateman, 2020). ‘Children first’ proponents wholly reject the notion that rights are conditional upon ‘good behaviour’ (as per the ‘no rights without responsibilities’ mantra of the Blair administrations). Rather, adults working in services for children are charged with the responsibility of ensuring that all children can access those protections, provisions and opportunities which are their fundamental rights. Where they fail to do so, the services – not the children – should be held accountable. Children should never be punished for the failure of services to deliver their rights.

In fact, using punishment (understood as retribution) as a rationale for sentencing / interventions with children and young people is considered antithetical to a ‘children first’ philosophy (Haines and Case, 2015). Interventions should aim to enable the child to (re)integrate with his/her community / society, a principle acknowledged and made explicit in the most recent *Guidelines* for sentencing children and young people (Sentencing Council, 2017). Interventions and processes should be distinct and separate from arrangements for adults, sensitive to the children’s level of maturity and life experiences / circumstances (e.g. Haines and Case, 2015; see also NAYJ, 2019). Unsurprisingly, the

principle of custody as a last resort and for the shortest appropriate time is also frequently cited, with additional calls for children who are deprived of their liberty, on whatever grounds, to only be held in child care establishments (e.g. Secure Children's Homes). Other principles which have been cited as central to 'children first' / 'child-friendly' youth justice (see generally Haines and Case, 2015; Council of Europe, 2010; NAYJ, 2019; Byrne and Case, 2016; Drakeford, 2010; Gray, 2019; Smith and Gray, 2019; Evans et al., 2017) include:

- All elements of due process should be guaranteed for children
- Dignity: children should at every stage be treated with care, sensitivity, fairness and respect
- Legitimacy: decisions, processes, and interventions should be legitimate to children
- Provision of information and advice promptly and in an accessible manner by all 'competent authorities'
- Prevention as inclusionary
- Promoting relationship-based partnerships
- A considerable rise in the minimum age of criminal responsibility and immunity from prosecution
- Equality of treatment
- Acknowledging social injustice and victimisation
- A child friendly court system and sentencing framework

Evidently, there is no definitive set of agreed-upon principles which are promoted by all proponents of 'children first'. However, despite some variation in the specific principles espoused, the overarching aim is clearly shared: promoting social justice in children's lives. Whether expressed as an "aspiration… to positively promote the interest of our most marginalised children when they come into conflict with the law" (Byrne and Case, 2016:77); minimising harm and maximising their potential for the future (Haines and Drakeford, 1998); promoting the welfare of the child (NAYJ, 2019); maximising positive outcomes for the child (Haines and Case, 2015); or prioritizing children and young people's well-being (Smith and Gray, 2019); it is evident that the overarching concern is with promoting socially just outcomes. Some of the principles, such as a reforming the criminal records system to enable children to move on from their offending and increasing the minimum age of criminal responsibility, require government-level action, while others focus on what can be done within the current legislative constraints. While both are

important, the focus in this dissertation is the latter – that is, the principles which have tangible implications for Youth Offending Teams and Youth Courts regardless of the current legislative framework.

1.2 'Children first' in Wales

As mentioned in the introduction to this chapter, the Welsh Government have no legislative competence for youth justice. Hence, the incorporation of the principle 'children first, offenders second' into the Welsh youth offending strategies can be understood as an attempt to influence the administration of youth justice so that it is delivered in a manner compatible with Welsh social policy. As such, before considering how the idea of 'children first' has been represented in Welsh youth justice policy and practice, the broader social policy landscape for children in Wales is discussed.

1.2.1 Children in Wales: social policy

Following the first Welsh devolution settlement in 1998 (more on this in section 1.2.2), two of the first policies published by the newly formed Welsh Assembly Government[11] (WAG) were *Children and Young People: A Framework for Partnership* (WAG, 2000a), and *Extending Entitlement: Supporting young people in Wales* (WAG, 2000b). The former made clear the WAG's intention to use the United Nations' *Convention on the Rights of the Child* (UNCRC) as the overarching framework for the planning and delivery of services to children in Wales. The latter was explicitly concerned with maximizing the capacity of all young people aged 11 to 25 years "to make choices and pursue constructive paths… in ways that build on their interests" (WAG, 2000b: section 6.7). This would be achieved through the introduction of the 'universal entitlement': the unconditional entitlement of *all* young people aged 11 to 25 to a range of opportunities and services which would enhance their quality of life (Haines et al., 2004). These included, for example: education, training and work experience *tailored to individual needs*; sporting, artistic, musical and outdoor experiences; participation in decision-making; active citizenship and volunteering opportunities; as well as access to high quality services, including personal support and advice (WAG, 2002).

[11] The name Welsh Assembly Government can be misleading: at this stage, and until the formal separation of the WAG from the National Assembly for Wales (NAW) in 2007, the WAG (the 'executive') functioned as a committee of the NAW. This meant that, of the very limited functions that were devolved from Westminster to the NAW, the WAG could only act on the powers that the NAW voted to delegate to ministers.

Clearly, there are overlaps between the rights of the child as set out in the UNCRC and the universal 'entitlements' promoted by the WAG, especially in relation to education, recreation, and participation. It has been argued, however, that while the rights agenda is concerned with ensuring minimum standards (outcomes) for children, *Extending Entitlements* add to these by aiming to maximise positive outcomes and well-being through ensuring equality of opportunity (Haines and Case, 2015). Crucially, while both these policies – children's 'rights', and children's 'entitlements' – place corresponding obligations on, or 'responsibilise', adults to ensure the accessibility of these rights and entitlements to all children (i.e. to ensure that they are *real*, not just nominal), *Extending Entitlements* emphasises *choice*: young people (aged 11 to 25) should be enabled and encouraged, but not *required*, to take advantage of these opportunities.

These two strategies formed the basis of future social policies for children and young people in Wales. There are too many to discuss here, but key developments include:

- Establishing the role of a Children's Commissioner for Wales,[12] who must "have regard to" the UNCRC when exercising their functions;[13]
- Establishing a children and young people's Assembly – "Funky Dragon" – in 2002; three years after its dissolution in 2014, a Youth Parliament was established, which held its first elections in 2018;
- Local authorities required to establish Children and Young People's Partnerships (WAG, 2002);
- *Children and Young People: Rights to Action* (WAG, 2004) reiterated the WAG's commitment to the UNCRC by stating that the treaty had been adopted as the basis of all their work with children and young people in Wales;
- School councils made mandatory for all maintained schools in 2005,[14] giving more substance to children's participation rights;
- Section 12 of the *Children and Families (Wales) Measure 2010* required all local authorities to make such arrangements as it considers suitable "to promote and facilitate participation by children in decisions of the authority which might affect them";
- *The Rights of Children and Young Persons (Wales) Measure 2011* imposed a duty on all Welsh Ministers, when exercising their functions, to have "due regard" to

[12] This came into effect in 2001 via the provision made in section V of the *Care Standards Act 2000*.
[13] See regulation 22 of *The Children's Commissioner for Wales Regulations 2001*.
[14] Via the *School Councils (Wales) Regulations 2005*.

Part 1 of the UNCRC and its Optional Protocols. It also stipulated that Ministers must take action to increase awareness of the UNCRC among the public.

- The *Social Services and Well-being (Wales) Act 2014* (SSWB Act) extended this duty of "due regard" to the UNCRC to those agencies "discharging child protection duties and duties to children in need" (section 7). This Act, and the *Well-being of Future Generations (Wales) Act 2015*, emphasize the rights of children to enjoy a positive experience in many areas of their lives (including their: home; community and environment; mental and other health; friendships; playing; learning; employment etc.), and the duty of service providers to ensure that the necessary provision is available and accessible.

These developments are but a few examples evidencing the centrality of children's rights in Welsh social policy, especially their participation rights. It is possible to discern from these policies a clear and coherent conception of children – the 'policy child' in Wales is seen as a citizen in her/his own right (Drakeford, 2010:143; see also Clutton, 2007). Children's 'citizenship' is characterized by fundamental rights and entitlements which are designed to maximise their well-being *as children*. Adults – parents or carers, and the State (via public and social service providers) – are charged with the responsibility for ensuring that these rights are realised and that the entitlements are accessible to all. Where families struggle to support their children to access their rights and entitlements, they should be supported by the State to do so (e.g. through programmes such as *Families First* and *Flying Start*). The emphasis on participation, which runs throughout the policies, recognises the value of children's agency and their (evolving) capacities to make independent decisions:

> "Children and young people should be seen as citizens, with rights and opinions to be taken into account now. They are not a species apart, to be alternately demonised and sentimentalised, nor trainee adults who do not yet have a full space in society." (WAG, 2004)

However, despite this clarity at a policy level in relation to the position of children in Welsh society, the real impact of these policies and developments – and their translation into tangible outcomes for children and young people – is less clear. A recent evaluation of *Extending Entitlements* agenda notes that the emphasis on the principle of 'universality' has diminished, with youth services "tend[ing] to be more 'problem orientated' rather than

'opportunity focused', more selective rather than more universal" (Welsh Government, 2018:10). The increasing focus on the 'deficits' presented by young people is contrary to the vision of *Extending Entitlement* – that of extending positive opportunities and experiences to *all* young people, including by providing extra support to those who might otherwise struggle to access these opportunities. It has resulted in "the wholesale reduction of universal, open access community-based youth work provision and its replacement with 'targeted' provision" (*ibid*.).[15]

As for children's rights, there have been some indications that, after the passing of the *Measure*, the Welsh Government's emphasis on children's rights diminished. For example, although a duty of "due regard" to the UNCRC was further extended to those agencies 'discharging child protection duties and duties to children in need' under section 7 of the *Social Services and Well-being (Wales) Act 2014*, there is currently no legislation imposing the same duty on local authorities.[16] More surprisingly, there is no reference whatsoever to the UNCRC in the Welsh Government's *Well-being of Future Generations (Wales) Act* 2015. Combined with the removal of the role of Minister for Children (Evans et al., 2017) and the effective dissolution of the children and young people's assembly in 2014 (initiating a four-year period in which a national forum for children's participation was absent), it appeared as if the children's rights agenda which dominated the first three terms of the NAW somewhat faded.

There are, perhaps, questions to be asked about whether the 'due regard' duty provided in the 2011 *Measure* goes far enough, including whether the mechanisms for accountability need to be more robust (Hoffman and O'Neill, 2018). Miller (2018) argues that in any new human rights legislation, a duty of "due regard" should be followed by a "duty to comply" after a specified period. He argues that a duty of "due regard" is a necessary *phase* which will enable the relevant parties to make preparations for the commencement of a "duty to comply", but that experience has shown "a 'due regard' duty by itself does not lead to sufficient improvement in people's lives" (p.55). To date, there is no evidence to indicate that the Welsh Government is contemplating a 'compliance' duty in relation to the UNCRC.

[15] It should be acknowledged that local authorities have been severely under-funded since the introduction of austerity by the UK Government in 2010; one consequence has been the decimation of youth services across Wales (and England too). Funding, therefore, (or lack of it) is a contributing factor to this failure to achieve the vision of *Extending Entitlement*.

[16] Guidance on section 25 of the *Children Act 2004* issued by the WAG in 2006 stated that "Lead Directors [of local authorities] will be responsible for making sure that the local authority implements the UN Convention on the Rights of the Child" (WAG, 2006:para.2.42). However, this guidance does not have legal status: "It *should* be complied with by local authorities carrying out their social services functions unless local circumstances indicate exceptional reasons that justify a variation." (ibid., p.3, emphasis added). Some local authorities have chosen to impose a duty of "due regard" to the UNCRC on themselves.

That said, in early 2020, the Welsh Government successfully secured the National Assembly's vote on the removal of the defence of 'reasonable punishment' for adults charged with assaulting children. In so doing, they recognised the legal personhood of children and gave them equality with adults before they law, in line with the long-standing recommendation by the UN Committee on the Rights of the Child (2008, 2016). Moreover, the Government also succeeded in passing the *Senedd and Elections (Wales) Bill* through the Assembly (now known as the Senedd) which, as of June 2020, has extended the voting franchise to 16 and 17-year olds in local and Senedd elections. Both these developments reinforce the policy position that children are considered to be young citizens of Wales. The next subsections consider the significance of this citizenship for children in the Youth Justice System.

1.2.2 Youth Justice in Wales – an 'oddity'?

Youth justice in Wales cannot be understood in isolation from the nation's constitutional position in the UK and the gradual process of devolution. The first of many devolution settlements was provided via the *Government of Wales Act 1998* (GOWA 1998). This Act created the National Assembly for Wales (NAW) as a single body, incorporating both, but with no clear separation between, an executive and a legislature (Rawlings, 2003). The transfer of some ministerial functions (primarily those of the Secretary of State for Wales) to the NAW meant that it had some executive responsibility for the 20 policy fields set out in the Labour (UK) government's White Paper, *A Voice for Wales* (Wales Office 1997). Primary legislation, however, remained entirely the prerogative of Westminster. This remained the case until 2007, when the provisions of the *Government of Wales Act 2006* (GOWA 2006) came into effect.

A fuller explanation of devolution and of the evolving legislative competences in Wales is included in Appendix 1, but for the purpose of this section, suffice to say that while each of the three subsequent devolution settlements (the *Government of Wales Act 2006*, the *Wales Act 2014* and the *Wales Act 2017*) modified[17] the National Assembly / Welsh Government's powers, criminal justice has always remained beyond the scope of legislative competence in Wales. Moreover, no provisions have been made for a separate judiciary, although the recent 'Thomas Commission' recommended that, along with full devolution of justice from Westminster to Cardiff, Wales should become a separate legal

[17] The choice of the word 'modified' is deliberate, as commentators are mixed in their views as to whether these Acts have enhanced or restricted the NAW's powers – see for example Geldards Law Firm, 2017 https://www.geldards.com/wales-act-2017.aspx; Wyn Jones, 2016 www.walesonline.co.uk/news/politics/richard-wyn-jones-bill-12091891; BBC News, 2017 www.bbc.co.uk/news/uk-wales-politics-38813095

jurisdiction with Welsh law formally recognised as distinct from English law (Commission on Justice in Wales, 2019).

In the most recent devolution settlement (the 'reserved powers' model), the power to legislate for 'crime, public order and policing', as well as 'anti-social behaviour'; the 'rehabilitation of offenders'; 'criminal records'; 'the legal profession' and 'legal aid'; 'mental capacity'; the 'age of criminal responsibility'; and 'prisons and offender management'; is reserved to Westminster.[18] Although separate arrangements exist within the criminal justice system for children who offend – including 'specialized' Youth Courts and custodial institutions,[19] different sentencing principles and options, and a range of diversionary alternatives to prosecution – the youth justice system (YJS) in England and Wales is essentially a modification of the criminal justice system for adults, maintaining a principal statutory aim of preventing (re)offending by children and young people.[20]

The list of reservations described above demonstrates that many of the core components of the Youth Justice System (YJS) are legislated by the UK Government and Parliament. However, despite having no legislative competence for the YJS, the Welsh Government shares responsibility with the Youth Justice Board for the oversight and administration of youth justice in Wales. Within the current statutory framework for the YJS (which came into effect with the *Crime and Disorder Act 1998*), the multi-agency Youth Offending Teams (YOTs) – which comprise a significant part of the system – must at minimum include representation from the police, probation, social services, health, and education (CDA 1998). While Westminster retains legislative responsibility for the police and probation service, policing has traditionally been highly localised, with Chief Constables able to focus their priorities and funding in terms of local demand (Jones, 2008). Since the introduction of Police and Crime Commissioners (PCCs) via the *Police Reform and Social Responsibility Act 2011*, it has been argued that policing has, *de facto*, been devolved to Wales (Michael, 2018). As for social services, health, and education, these policy areas are all fully devolved to Wales – controlled by local authorities and health boards who are accountable to the Welsh Government (*Government of Wales Act 1998*; see also Williams and Felizer, 2013).

Put another way, youth justice remains the only domestic policy area relating to children for which the Welsh Government and Senedd *do not* have legislative competence. This arrangement has been the subject of a long debate on the prospect of devolving youth

[18] As stated in Schedule 7A of the *Wales Act 2017*.
[19] Though the extent to which Youth Courts and youth custodial facilities (especially Youth Offending Institutions and Secure Training Centres) are 'specialized' and appropriate for children is highly contentious (see, for example, Charlie Taylor's review of the YJS: Ministry of Justice, 2016b).
[20] As stipulated in Part 3, s.37 of the *Crime and Disorder Act 1998*.

justice to Wales – a recommendation made in 2014 in the *Silk Commission* and reiterated again in the recent *Thomas Commission*. Central to this debate is the claim that the UK Government and the Welsh Government have competing, if not contradictory, values, when it comes to children and young people: the former advocating greater social control; the latter a champion of children's rights and social justice (Haines, 2009; Butler and Drakeford, 2012; Thomas, 2015). On one hand, it has been argued that devolution has "unquestionably… created the space in which the dragonization of juvenile justice has taken and is taking place" (Haines, 2009:233; see also The Howard League, 2009). On the other hand, the 'dragonization' of youth justice – i.e. the notion that there is a distinctively 'rights-based' Welsh approach to youth justice – has been criticized as being something of a myth when it comes to the implementation of policy in practice (notably in Muncie, 2011, Field, 2015, Evans et al. 2017). Some possible explanations for this 'policy-practice gap' are discussed in section 1.3. First, however, the Welsh Government's influence on youth justice policy is considered – in particular, the promotion of the principle 'children first, offenders second'.

1.2.3 The Welsh youth offending strategies

The National Assembly for Wales' decision to locate youth justice services within the remit of Health and Social Services rather than Crime Prevention and Community Safety has been cited by many as an early example of the philosophical differences between Welsh and English youth justice policy (see for example, Evans et al., 2017; Haines and Case, 2015; Cross et al., 2003). The Welsh Assembly Government sought to assert this difference by collaborating with the Youth Justice Board Cymru (the Wales 'branch' of the YJB) to develop a national youth offending strategy. Launching the Wales Youth Offending Strategy Group in 2002, Jane Hutt (then the WAG Minister for Health and Social Services) described it as an opportunity to bring together the "Youth Justice Board's criminal justice responsibilities" and the WAG's prioritisation of children's well-being, in accordance with the WAG's devolved responsibilities (cited in Cross et al., 2003:156). The product of this collaboration was published in 2004: the *All Wales Youth Offending Strategy* (AWYOS). Described in the foreword as a "national framework for preventing offending and reoffending among children and young people in Wales" (WAG and YJB, 2004:1), one of its central principles was that children and young people in the Youth Justice System should be treated as "children first, offenders second" (p.3).

Based on the wider context of social policy for children in Wales, one would assume that the implication of the statement 'children first' here was to charge youth justice services with the responsibility of maximizing the well-being of all children who came to their attention by ensuring that they can enjoy their rights and entitlements – i.e. promoting social justice in their lives (Drakeford, 2010). The AWYOS did indeed state that children in the YJS possessed the same 'universal entitlements' as every other child, and that consideration must be given to their rights, as according to the UNCRC, when responding to their offences. Further, its prioritisation of the *prevention* of offending – "the best way to stop offending is to prevent it from happening in the first place" (WAG and YJB, 2004: foreword) – was set to be achieved by ensuring children's access to the universal services set out under *Extending Entitlement*.

From this we can infer that the Welsh Assembly Government understood offending by children to be primarily a result of social inequality and disadvantages (*structural* difficulties), which could be prevented by promoting social justice. However, this stance was diluted somewhat by contradicting statements about the appropriate response to offending by young people, and conflicting rationales. Among the sanctioned responses were "early intervention, restorative justice measures, appropriate punishment, and supported rehabilitation", in order to maintain a "balance between the interests of the child or young person and the interests of the community and potential victims" (WAG and YJB, 2004:3). Significantly, promoting the welfare of children and treating them as 'children first' was justified *because* it "reduces the risk of offending and re-offending and in doing so protects the public" (*ibid*.). In this strategy, then, it seems that ensuring that children have access to their rights and entitlements was seen as a means to an end – that end being reducing offending. This contradicted the assertion in other social policies that the rights and entitlements belong to all children *because they are young citizens* of Wales.

Haines (2009) contends that these contradictions arose from an attempt to accommodate the positions of both the UK Government / YJB and the Welsh Assembly Government in the strategy. After all, the content of the strategy had to be negotiated with the Ministry of Justice. The use of constructive ambiguity in the language of the documents was therefore required. This resulted in neither a compromise or alignment of perspectives, but rather an amalgam of competing values (Haines and Case, 2015). In other words, it may be understood as an attempt by the WAG to exert some influence over youth justice while being constrained by the legislation imposed by Westminster. Nonetheless, it is important to highlight these tensions given that 'children first, offenders second' was

initially introduced as a means of reducing reoffending, rather than a principled approach to youth justice based on the pursuit of social justice.

Five years after the AWYOS was published, the WAG and YJB published a *Delivery Plan 2009-2011* for the AWYOS (WAG and YJB, 2009). There was recognition in the document that more needed to be done "to improve the life chances of children and young people within, and at risk of entering, the youth justice system" (*ibid*., p.3). Of significant concern was the significant reduction in the proportion of children in the YJS who had access to full-time education, training or employment – dropping from 73.9% in 2004-05 to 65.7% in 2007-08. Blame for shortfalls in the implementation of the original strategy was partially levelled at "senior representatives from agencies that are crucial partners in the delivery of youth justice services" who were described as sometimes showing a "lack of engagement" (*ibid*., p.3). Arguably, the greatest significance of this *Delivery Plan* was its reconfiguration of WAG and YJB targets by which the YJB would monitor the performance of Youth Offending Teams: the 'Welsh Youth Justice Indicator Set' (WYJIS).

The WYJIS included not only the three 'key performance indicators' introduced across England and Wales by the YJB in 2005 (reducing 'first-time entrants',[21] reoffending, and custodial sentences), but also three further indicators, namely: engagement with education, training and / or employment; suitability of accommodation; and timely access to substance misuse assessment and treatment services. Welsh YOTs would be required to submit data relating to these performance indicators on a quarterly basis. Again, language of 'universal entitlement' and, to a lesser degree, rights, permeates this document. Children in custody are given particular attention in the *Delivery Plan*, which states that "despite the fact that their liberty is curtailed, children and young people entering custody must be able to access a similar range of rights and entitlements that they should have in their communities" (WAG and YJB, 2009:12). This clearly resonates with the principle of universality advocated by the WAG. The WAG's intention to "mainstream and embed consultation with, and the participation of, children and young people in the youth justice system" (WAG and YJB, 2009: 10) by working with the Children's Commissioner for Wales was also made clear. These stated intentions, and the new requirements for YOTs to actually realise some basic rights (accommodation, education / training / employment, and support services), clearly indicated a stronger commitment to social justice for children in the YJS.

[21] 'First-time-entrants' means children who receive a caution or a sentence (court disposal) for the first time.

By 2014, the YJB and Welsh Government had revised the AWYOS. Its underlying philosophy is conspicuous in the title: *Children and Young People First: Welsh Government/Youth Justice Board joint strategy to improve services for young people from Wales at risk of becoming involved in, or in, the youth justice system* (WG and YJB, 2014). It bears the hallmarks of *Extending Entitlement* and children's rights in its central aim of "improv[ing] services [and outcomes] for young people". Eight key principles are identified as underpinning the strategy, including:

- Young people are children first, offenders second;
- Young people in the youth justice system [should] have the same access to their rights and entitlements as any other young person;
- The voice of the young person [should be] actively sought and listened to;
- Services [should] focus on early intervention and holistic multi-agency support;
- A culture where identifying and promoting effective practice is fundamental to improving outcomes for young people and should be promoted;
- Services [should be] held to account for addressing the needs of young people;

This strategy is much more coherent in its values and principles than the original AWYOS. The child who has offended is seen as a young citizen with an equal claim to rights and entitlements as any other child (and therefore can equally expect youth justice and related services to enable him/her to enjoy those rights and entitlements); 'punishment' is not seen as an appropriate response to young people – rather, the emphasis is on promoting better outcomes and 'reintegration'; and the child's views and opinions are seen as central to any decision-making process. This has much in common with the overarching aim and principles of 'children first' cited by various academics and children's rights campaigners / organisations, as discussed in section 1.1. That said, there remains an ambiguity in relation to the notion of 'effective practice'. By failing to provide a clear explanation /examples of what constitutes 'effective practice', arguments could be made in favour of lots of different, contradictory, approaches.

It is worth noting that more recently, the *Youth Justice Blueprint for Wales* (Ministry of Justice and Welsh Government, 2019) dilutes some of these principles. Instead, it favours a more individualised and 'psychologised' interpretation of, and response to, youth offending. Here, the prevention and mitigation of trauma and 'adverse childhood experiences' appears to be the golden thread, while the social justice dimension – which is so central to the 2014 strategy – is barely discernible.

1.2.4 Models of practice: *Bureau* and *Enhanced Case Management*

Before turning to the evidence of whether, and how, 'children first' has been interpreted / implemented by YOTs, it is worth considering how two models of practice, developed in and rolled out across Wales, reflect this philosophy: the *Bureau*, and the *Enhanced Case Management* approach. While both are intended to promote positive outcomes for children (at different stages of the system), there is some disagreement as to the extent to which the latter is consistent with the principles of 'children first'. This is important to consider given that it is given prominence in the *Youth Justice Blueprint for Wales* (MoJ and Welsh Government, 2019).

The *Bureau*, as originated in Swansea YOT in 2009, operates as a form of pre-court diversionary mechanism. It seeks to divert children who have committed a low-level offence *away from* the formal Youth Justice System (i.e away from court proceedings), and, where necessary, *in to* appropriate, non-stigmatising (inclusive) interventions which offer support and promote pro-social behaviour (Haines et al. 2013; Smith, 2014; Haines and Case, 2015). Its purpose is twofold: avoiding the detrimental, 'criminalizing', effects of the formal YJS (e.g. accruing a criminal record, being 'labelled' and treated as an 'offender', reduced opportunities for education and employment), and enhancing the quality of the young person's life, by ensuring that they access their rights and entitlements (Haines and Case, 2015).

The *Enhanced Case Management* (ECM) 'model', on the other hand, is an approach to supervising children who are subject to court orders in the community. It was developed in recognition of the fact that, following the drastic reduction in the number of 'first-time-entrants' into the Youth Justice System, and of the number of children sentenced to custody (largely due to the promotion of diversionary alternatives, such as the *Bureau*), many of those who remained in the system (on community sentences) were not responding to traditional methods of working with children in the YJS. A new approach was therefore needed.

Both 'models' are ultimately concerned with improving outcomes for children and young people who offend, but the way in which this goal is pursued in the context of each model is very different – and it seems that this is partly due to their different understandings of offending by children.

The *Bureau* was developed based on the belief that most offending by young people is 'normal' and transient in its nature, and that formal intervention only exacerbates it (see discussion in section 1.1). Persistent offending by children (i.e. that which is not transient) is seen as a manifestation of broader, structural difficulties disadvantages, which typically reflect social inequality (Case and Haines, 2015). The ECM model, on the other hand, is based on the trauma recovery model (Skuse and Matthew, 2015). This was initially developed in a Secure Children's Home after observing that many of the children in, or at the threshold of, custody had experienced significant adverse experiences which affected their psychosocial development. Traumatic experiences, it is argued, can disrupt the natural maturation of the brain, and consequently affect social relationships and children's ability to regulate their behaviour (see, e.g. Public Health Wales, 2015). Offending is seen as one manifestation of these difficulties. So, while the *Bureau* conceives of offending as 'normal' and/or influenced by of *structural* disadvantages, the ECM sees it as a result of trauma, manifest in emotional and psychological difficulties which have a particularly detrimental effect on an individuals' ability to form and maintain relationships (Cordis Bright, 2017; see also Glendinning et al., 2021). In other words, there is a tension here between individual, and structural, explanations of offending.

Consequently, the emphases of the respective 'interventions' of both models are different. The primary focus of the ECM approach is relationship-building. A 'key person', usually the case manager (but it could be someone from outside the YOT, such as the young person's social worker), is tasked with the responsibility of establishing and building a positive relationship with the child. Transparency, consistency, and boundaries are emphasised. Part of this process might entail addressing basic needs, such as ensuring suitable accommodation and adequate nourishment. The idea is that, with time, as the child starts to trust the worker, they will be better able to talk about problems that underlie their behaviour. At this stage, the focus of the intervention can shift to, e.g. therapeutic input, which will eventually lead to the child developing self-awareness and realising / appreciating the harm that their offences have caused to others (based on Maslow's 'Hierarchy of Needs' – see Maslow, 1943, 1962, 1970). Getting to this stage is seen as a necessary platform for children to plan change in their own behaviour and, eventually, to move on from offending (Evans et al., 2020). While this model addresses deficiencies in a child's well-being, it seems limited to only the most fundamental of 'rights' (e.g. being nourished, having a safe place to live, etc.). In contrast, the *Bureau* is based on a principle of maximising positive outcomes for children – to be achieved by ensuring that all their rights and entitlements are accessible to them.

Perhaps the most significant distinction between the two models relates to the value afforded to children's participation in the processes they entail. Meaningful participation by the child is central to the *Bureau* process. This is based on a concept of children as active social agents with the capacity to form and express opinions and, crucially, as 'experts' of their own lives. Given that they are the ones most affected by youth justice processes, primacy should be given to their views (Hart and Thompson, 2009; Creaney, 2014; Case and Haines, 2015). The focus of the *Bureau* proceedings is not limited to their offences; they are designed to find out how the child feels more broadly about his or her well-being, and what (if anything) they think might be helpful to them to move forward. The *Bureau* also promotes parent / carer engagement, through supporting them to (re)establish dialogue with their child (if necessary) and encouraging them to accompany their child and contribute to the *Bureau* meetings.

In the ECM model, both the child and his/her family's participation are marginalised. Adult professionals (YOT practitioners / managers) decide whether to refer a child to the 'ECM' process, based on *their* assessment of a child's suitability for the model, and subject to the child's consent. If the referral is accepted, an alliance of professional experts (e.g. social workers, school teachers, YOT workers, health workers) convene and, under the leadership of a clinical psychologist, create a 'timeline' of the child's life, identifying incidents or periods which *they* diagnose as significant or 'traumatic' (the 'formulation' stage). Based on this, an intervention plan will be decided based on the clinical psychologist's recommendations. All this is done without any consultation with the child or his/her family, whose narratives and interpretation of events may differ significantly to the professional one.[22]

The denial of children's participation rights in the ECM model (which is championed by the Welsh Government and is central to the *Youth Justice Blueprint for Wales*) seems incongruous with the wider social policy and youth justice agenda in Wales, where children's agency and participation rights are prominent. This somewhat obscures the clarity found within the 2014 strategy on the expectation for services to ensure that children's voices are central to youth justice processes and interventions – a core principle of 'children first'.

[22] This marginalization of children and parents' voices was evident in the evaluation process too. One of objectives of the evaluation was to find out if the young people involved in the trial had experienced positive outcomes. Only four young people were interviewed. No parents agreed to be interviewed. (Cordis Bright, 2017).

1.3 'Children first' in practice

This section considers what is known about the way in which 'children first' has been interpreted and implemented (or resisted) by Youth Offending Teams (YOTs). In a significant contribution to the literature on the relationship between youth justice policy and practice, Thomas' study of YOT practice cultures revealed that practitioners' interpretation of 'children first' was quite far removed from that promoted by academic commentators and in the Welsh youth offending strategies (Thomas, 2015).[23] While she found consensus among practitioners about the importance of not labelling children as "offenders" or defining them by their offences, as well as the importance of treating each child as "individuals" with "wider needs" and (to a greater or lesser degree) promoting their welfare, there did not appear to be a common understanding of 'children first' as a *philosophy* of youth justice which ought to shape every decision, process and intervention with the explicit aim of promoting social justice in their lives. While there was, albeit to varying degrees, a commitment to addressing children's welfare, this tended to be characterised in terms of addressing "needs and problems" with little mention of broader, subjective aspects of well-being such as aspirations, skills, and interests (Thomas, 2015:188).

Although Thomas identified a commitment among some of the Welsh practitioners to ensuring that children had access to the services afforded to them under *Extending Entitlement*, it was also evident that practitioners' promotion of children's welfare and participation was not motivated / underpinned by a conception of children as citizens with fundamental rights (as per the principle of 'universality' of rights and entitlements promoted in the *All Wales Youth Offending Strategy*). Addressing children's welfare needs was identified as good practice – something to be done alongside addressing their offending behaviour. It is perhaps this lack of acknowledgement / primacy of the *right* of children to have their welfare needs addressed that facilitated a qualified approach to promoting children's welfare and best interests: "acceptance of the 'children first' approach was also contingent on the seriousness of the offending" (Thomas, 2015:191).

Clearly, this is not compatible with the 'children first' philosophy promoted by academic commentators and in the Welsh youth justice strategy. However, given the contradictions within the original *All Wales Youth Offending Strategy* (see section 1.2.3), combined with the YOTs' obligation to adhere to the risk-centred and prescriptive *National Standards*, it is possible that the implication of the 'children first, offenders

[23] Note that Thomas' research was undertaken prior to the publication of the updated 2014 strategy.

second' principle for practitioners was not clear. It may be the case that the clarity found within the 2014 strategy may have since influenced YOTs in Wales to better align with a 'children first' philosophy. That said, more than a decade prior to the publication of Thomas' study and preceding Wales' first youth offending strategy, Cross et al. (2003) found that, despite the introduction of prescriptive *National Standards*, there was "no evidence of an 'enforcement culture'; practitioners generally referred to 'child-friendly' legislation to justify failing to breach young people who missed appointments… all the practitioners subscribed to some version of 'children first'" (p.157).[24]

Notwithstanding the limitations of these studies (only two Welsh YOTs were involved, and the YOTs in each study may not have been the same ones), it appears as if there was a stronger commitment to the *sentiment*, at least, of 'children first' in the early 2000s, when the Youth Offending Teams created by the *Crime and Disorder Act 1998* were nascent, than a decade later. This suggests that the clarity in the second strategy might not necessarily have influenced practice in the way suggested above. In fact, the translation of national policy into local implementation has been questioned more fundamentally. Such is the degree of variation that has been observed between different localities' youth justice practice that many academics, perhaps most famously Muncie, have questioned the extent to which national policy is a reliable indicator of practice (Muncie, 2011). Decentralization, he argues, has facilitated significant differences in the ways in which national policy imperatives / directives are interpreted, mediated or resisted on a local level (see also McAra, 2004; Goldson and Hughes, 2010). Therefore, while the Welsh Government has some power and influence over local authorities, county councils are independent of central government and can, to a large extent, decide on their own priorities and how to spend their budget. Operational priorities for youth justice may vary, for example, according to the department in which it is located (e.g. education departments or Children's Services).

Youth justice practice may be shaped by a range of other factors, including the YOT's organisational culture and, of course, the occupational identity or values of individual practitioners (e.g. Bailey and Williams, 2000; Muncie, 2011; Field, 2007; Fergusson, 2007; Souhami, 2007; McAlister and Carr, 2014). Indeed, "occupation, training and function" were identified as key predictors of practitioners' approval of / hostility towards the idea of 'children first' in Thomas' study (Thomas, 2015:187). Probation and

[24] It is important to reiterate that the idea of 'children first' predates Welsh devolution and the reconfiguration of the Youth Justice System via the *Crime and Disorder Act 1998*. The incorporation of the principle 'children first, offenders second' into the Welsh strategy, therefore, may be interpreted as both an encouragement and legitimisation of the *continuation* of 'children first' practice against the 'new youth justice' landscape (see e.g. Goldson, 2000; see also Pitts, 1999).

police officers were more likely than social workers to emphasise children's offending behaviour and the need to manage their risks to the community (the "public protection" argument) and, by inference, took an 'offender-first' approach (for similar findings, see e.g. Field, 2007; Souhami, 2007).

In an article which highlights the significant scope for local variation in the delivery of youth justice, Smith and Gray (2019) identify three main 'models' of youth justice currently operating in English YOTs which they describe as 'offender management', 'targeted intervention' and 'children and young people first'. Interestingly, they identify as 'outliers' YOTs that "place the importance of engaging with, listening to and promoting the participation of children and young people at the forefront of the design and delivery of all their services" (p.563). This suggests that the principle of participation is perhaps not as central to those YOTs operating a 'children and young people first' philosophy. Nonetheless, the fact that there are YOTs operating a 'children first' philosophy in England, where until recently there was no endorsement of 'children first' at a national governance/administrative level (unlike in Wales), suggests that UK policy is not an insurmountable barrier to implementing 'children first' youth justice at a local level.

1.4 Conclusion

The reader will recall that the primary purpose of this chapter was to establish a working definition for 'children first' for the purpose of this investigation into breach practice. The discussion in this chapter has shown that the idea of 'children first' is neither uniformly represented in academic writing and policy, nor consistently interpreted and applied by youth justice practitioners. In particular, there is reason to suspect that the philosophical underpinnings of 'children first', evident in the 2014 strategy and in wider academic writing, have been weakened in practice. This has led some academics to question whether, in some areas at least, 'children first, offenders second' reflects a mere "branding exercise rather than a paradigmatic shift" (Evans et al., 2017:14).

That said, there are many commonalities between the representations of 'children first' in academic writing, campaigning material, international human rights instruments, and the Welsh strategies, and it is on these that the working definition builds. First, in all accounts of 'children first', the over-arching commitment is to the well-being of the child, or the promotion of social justice in their lives. Second, in Welsh policy, children are considered to be young citizens, where the essence of their citizenship is their 'rights' and 'entitlements'. These rights and entitlements consist of a range of protections, services and

opportunities which designed to ensure and maximise their well-being. While many children will be protected and have access to their rights and entitlements through their parents, some will not. Therefore, and third, the State (through service providers) has a responsibility to ensure that *all* children are protected and can access these opportunities and services. Crucially, while a duty of care to children means that certain rights (e.g. protective rights, provision of education, etc.) must be ensured, children's agency, or choice, is also respected, as they should be enabled and encouraged, but not *required*, to take advantage of their entitlements. Fourth, children's participation rights are accentuated in Welsh policy. Finally, the Welsh Government does not differentiate between children who are in conflict with the law, and those who are not: they are all children, and each of them have the same 'citizen' status.

Accordingly, the *overarching aim* of 'children first', in its application to youth justice practice in Wales, can be understood as promoting social justice, characterized by the following working definition:

> The prioritization, by all youth justice agents, of the aim of maximising children's well-being in *every* decision and process affecting the child,[25] where well-being is understood as a combination of *realising* the rights of the child as according to the UNCRC, and enabling the child to have the *means* to pursue subjective goals or aspirations.[26]

This is necessarily contingent on the following *enabling principles*:

- **Not doing harm**: maximum diversion from the formal system, especially custody; minimum sufficient criminal justice intervention; not using punishment as a justification for any intervention; and ensuring that interventions, processes, and interactions with children and their families/carers are inclusive, not stigmatising.
- **Primacy of the welfare principle** and the child's best interests.
- **Provision of citizenship-based universal rights and entitlements** to children and their families, guaranteed by the State and with local versions detailing tangible services and opportunities;

[25] This means that even in cases where custody is unavoidable, the primary concern should remain the maximization of well-being, including by mitigating the harm inflicted by a custodial sentence and by preventing further harmful consequences.

[26] Subject to two obvious caveats: they cannot be harmful to others; and there is no obligation for services to cater for expensive tastes (see, e.g. Sen, 1985 and 2009).

- **Service accountability**: services must be 'responsibilised' for upholding children's rights and ensuring that children are *aware of* and *able to take advantage* of their entitlements as set out in *Extending Entitlement*.
- **Meaningful participation** in all decision-making, processes, and interventions; and
- **Inclusive interventions** which build young people's skills.

These principles and overarching aim will inform the analysis in this thesis. The next chapter considers whether, and how, the legislation, guidance, and practice evidence on breach decision-making are compatible with this working definition.

Chapter 2: (Non)compliance and 'breach' in the Youth Justice System.

Preface

Based on the overarching aim and principles of 'children first' identified in Chapter 1 (section 1.4), it follows that *at minimum*, diversion from prosecution, initially, and from custody thereafter, should be a priority for the relevant criminal justice decision-makers in a 'children first' system. To this end, Wales and England have already witnessed remarkable success. It was alluded to in the previous chapter that the Youth Justice System has shrunk considerably over the last decade or so, evidenced, in part, by the drastic reduction in 'first-time entrants' (FTEs) to the system. To be more specific, the number of FTEs in the jurisdiction of England and Wales fell by 85 per cent between the years ending in March 2010 and March 2019 (MoJ and YJB, 2020a). In Wales, a similar reduction of nearly 85 per cent was seen in the total number of cautions and court sentences given to children during the same decade (MoJ and YJB, 2011 and 2020b).[27] A similar pattern is observed in custody statistics: the number of custodial sentences imposed on children in Wales fell from 290 in 2009-10 to only 42 in 2018-19 (*ibid*.) – a reduction of just over 85 per cent. Throughout the year ending in March 2020, there were fewer than 30 children from Welsh Youth Offending Team areas in custody at any one time (MoJ and YJB, 2020c).

These developments, however, remarkable as they are, are not evidence of a 'children first' philosophy shaping the Youth Justice System. It has been argued that the initial reductions in numbers of FTEs (starting in 2007-2008) can be attributed to the (anticipation of the) abolition of the then (UK) Labour government's target of 'Offences Brought to Justice' (see e.g. Bateman, 2008, 2013; Morgan and Newburn, 2012). It has been further argued that the continuing contraction of the formal system, including the custodial estate, has been driven at least in part by financial imperatives, associated with the policy of austerity imposed by the 2010 coalition government and sustained by successive Conservative governments since 2015 (see e.g. Bateman, 2014; Yates, 2012). This is not to deny the indications of ideological difference (Welsh Government) or a shift (Youth Justice Board) at a policy level. Rather, it is a question of degree: to what extent has the contraction in the YJS been influenced by progressive youth justice ideology, rather than economic policy?

[27] Falling from 9,330 in 2009-10 to 1,449 in 2018-19.

Regardless of the answer, diversion from the formal system and from custody are evidently necessary strategies for upholding the 'children first' principle of 'not doing harm'. However, they are not sufficient for the purpose of maximising a child's well-being and promoting socially just outcomes. Simply diverting a child from prosecution without doing anything to try to address any 'well-being deficiencies' which, incidentally, may have contributed to their offending behaviour and/or may affect their ability to stop offending, does nothing to improve their well-being. Nor does diverting a child from custody by imposing a community sentence whose requirements are stigmatizing and insensitive to the child's circumstances and ability to comply. This could be as detrimental to the child's well-being as a custodial sentence, if not more so, not least because of the potential for children to be 'breached' (returned to court), and punished, for failing to comply with the requirements of the court order. In a 'children first' Youth Justice System, the aim of maximising a child's well-being should underpin *every* decision and intervention. This includes the decisions made when sentencing a child, as well as those made when a child fails to comply with a court order.

2.0 Introduction

This chapter explores the concept, and process, of 'breach' in the Youth Justice System. Broadly, 'breach' is a mechanism for enforcing (or attempting to enforce) children's compliance with criminal justice orders which are served partially, or fully, in the community. In attempting to understand how breach might be understood and exercised in a way consistent with a 'children first' philosophy, it is first necessary to interrogate the notion of 'compliance' itself. What does compliance with criminal justice orders look like? Why is it important, and what influences (non)compliant behaviour? Crucially, whose responsibility is it when a child fails to comply? It is only by establishing this context that one can start making sense of 'breach' – in particular, what the *purpose* of breach is. However, breach practice by YOTs and Youth Court magistrates is influenced by more than practitioner views of the causes of non-compliance and of the purpose of breach. There is also a breach *process* defined in legislation and elaborated in statutory guidance which YOTs and magistrates are expected to follow. An analysis of this process, therefore, is equally important to understanding the potential influences on breach decision-making.

The chapter is ordered as follows: Section 2.1 introduces the notions of 'compliance' and 'breach' in the Youth Justice System (YJS) by providing a brief overview of how breach may arise, and of the possible consequences for the child.

Section 2.2 interrogates the concept of compliance. It draws on key theoretical contributions from probation literature to distinguish between different forms of compliance, as well as to offer some insight into *why* people do or do not comply with community sentences. These theoretical positions are then tested against the findings emerging from the (scant) literature on compliance and breach in the YJS.

Section 2.3 considers the purpose of breach, drawing from research practitioners in the Probation Service and in the YJS. Five 'purposes' are discussed, namely: individual accountability; service accountability to the courts; public protection; punishment; and setting boundaries.

Section 2.4 examines the breach process in the YJS. It starts with a consideration of the way in which the requirements of criminal justice orders ought to be communicated to the child, before analysing the process for responding to non-compliance. This analysis is based on the relevant legislation, as well as the 2013 *National Standards for Youth Justice Services* (MoJ and YJB, 2013), [28] the *Sentencing Children and Young People Definitive Guidelines* (Sentencing Council, 2017), and a collection of both statutory and non-statutory guidance for YOTs which were in force during the data collection phase of this study. The immensity of 'discretion' afforded to YOTs in the breach process is highlighted, followed by a brief discussion of the benefits and potential dangers associated with this.

Section 2.5 concludes the chapter, and hence the review of the literature undertaken for this study. It reflects on the main considerations emerging from this chapter and concludes with a reflection on the constraints and possibilities within the current legislation and practice guidance for enabling YOTs and magistrates to respond to non-compliance in a manner consistent with a 'children first' philosophy.

2.1 An introduction to 'compliance' and 'breach' in the Youth Justice System

When a child is convicted of a criminal offence, there are a range of sentences available for the court to impose. These typically fall into three categories: first-tier penalties, community sentences, and custodial sentences. First tier penalties are described as inclusive of: absolute discharge; conditional discharge; fine; deferred sentence[29]; bind over; Compensation Order; Referral Order; and Reparation Order (MoJ and YJB, 2017a). The Youth Rehabilitation Order (YRO) is the only community sentence available for

[28] It has already been noted in Chapter 1 and the Introduction to this thesis that the *Standards* were revised in 2019. However, they are not considered in this chapter as they were not in force during the data collection phase of this investigation.

[29] It is arguable whether a deferred sentence constitutes a first-tier penalty as opposed to no penalty at all, given that a sentence will eventually be passed.

young people, according to the definition of 'community sentence' provided by the Ministry of Justice and Youth Justice Board (*ibid.*).[30] The only custodial sentence available to the Youth Court is a Detention and Training Order (DTO), of up to two years in length. Half of this sentence is served in custody; the other half in the community and subject to the requirements of a 'Notice of Supervision' (or 'DTO licence'). Longer custodial sentences can be imposed on children by the Crown Court in cases of serious offences or 'grave crimes' (see Appendix 2 for a full list of custodial sentences available for children). If the young person is still under the age of 18 at the time of their release, the ensuing licence period will be supervised by the Youth Offending Team (MoJ and YJB, 2013).

Given that this study's primary purpose is to investigate the breach decisions of Youth Offending Teams (YOTs) and Youth Court magistrates, criminal justice sentences which require no further engagement with the YOT after their imposition (stand-alone Compensation Orders, bind-overs, discharges, deferred sentences, and fines) are not considered. The criminal justice sentences which *are* considered include: Referral Orders; Reparation Orders; Youth Rehabilitation Orders; and Detention and Training Orders (the period spent under 'Notice of Supervision' in the community, or 'DTO licence').[31] For ease, these sentences are collectively referred to as 'criminal justice orders'.

Each of these criminal justice orders consists of one or more statutory requirement with which the child must comply. Generally, the requirements can be categorized into two types: those which compel a child to *do* something (e.g. to attend supervision sessions, undertake reparation work, participate in a particular activity, or reside in a specified address), and those which *prohibit* a child from doing something (e.g. associating with particular people, entering specified geographical areas, or leaving place of residence between specified hours (curfew)). Although it is the magistrates who decide on the *type* and *length* of the order imposed, they are not always responsible for determining the specific *requirements*. For example, the requirements of a Referral Order are determined by a panel of community volunteers, officially known as the 'Youth Offender Panel', and the conditions of DTO Notices for Supervision are decided by the YOT (see Appendix 3 for the specific requirements that are available for each order, including whether they are mandatory or optional; the maximum permissible duration of each order; and the party responsible for deciding on the nature of the requirements).

[30]The Youth Default Order, a community sentence provided for by the *Power of the Criminal Courts (Sentencing) Act 2000* and amended by the *Criminal Justice and Immigration Act 2008*, appears never to have been brought into force (Rahman and Rendell, 2012 and 2017; also, no Youth Default Orders have been recorded in the annual youth justice statistics for at least a decade).

[31] Even though longer-term custodial sentences require YOT supervision upon release if the young person is under 18, these sentences are not considered in this study. The reason for this has been explained in the *Introduction* to this thesis.

In most cases, it is the local YOT who is responsible for enabling, supporting, monitoring, and 'enforcing' the young people's compliance with the requirements (MoJ and YJB, 2013). Regardless of the order imposed, all children are further required to abide by the YOT's local policy on un/acceptable behaviour and their expectations in relation to timekeeping (*ibid*.). This should be explained to the child at the beginning of the order (or DTO licence period), along with the rest of their responsibilities and rights under the terms of the order (see section 2.4.1 of this chapter).

The implications of failing to comply with one or more of the statutory requirements are discussed fully in section 2.4. For now, suffice to say that if a child fails to comply with any of the statutory requirements, and the YOT is of the view that (s)he had no acceptable reason for doing so, the YOT *can*, but does not have to, breach him/her: i.e. return him/her to court, where (s)he will stand accused of breaching a statutory order.

The MoJ and YJB (2017a:2) define the 'breach of statutory order' (BSO) offence as one of "failing without reasonable excuse to comply with the requirements of an existing statutory order" (see interrogation of this definition in section 2.4.3). If the child admits to, or is found 'guilty' of, the BSO offence, there are a range of options available for the court. Again, these will be elaborated on later in the chapter (section 2.4.3), but broadly, their options are as follows:

a) Allow the order to continue without amendments;
b) Allow the order to continue, but with amendments (e.g. by adding or amending the specific requirements and/or amending the length of the order; or, in the case of DTOs, 'recalling' to custody);
c) Revoke the existing order and re-sentence the child for the original offence;
d) In addition to option (a) or (b) or (c), the court can sentence the child for the BSO offence (most likely with a fine).

It ought to be clear from this brief introduction that 'breach' may be difficult to square with a 'children first' philosophy, due to the manifold potential harms it can inflict on the child. Not only will breaching children further expose them to the formal machinery of the YJS; they could also end up in custody or punished in another way. If it is accepted that maximum diversion from the formal system and the avoidance of punishment as a rationale for sentencing are fundamental to the 'children first' principle of 'doing no harm', then breaching a child clearly risks outcomes which are contrary to a 'children first' philosophy. The question, then, is whether the process can be employed in a manner

consistent with 'children first', and/or whether breach can be used in such a way that ensures the outcomes of the process mitigate any harm that may be intrinsic to the process.

The key point to emphasise at this juncture, however, is that a breach hearing, a conviction for breaching a statutory order, and/or further punishment for a BSO offence, are by no means automatic or inevitable consequences of non-compliance with a criminal justice order. In the first instance, a breach hearing will only take place if the YOT decides to breach. As is demonstrated in section 2.4 of this chapter, YOTs have considerable discretion when deciding how to respond to non-compliance with criminal justice orders. Second, if they choose to breach, the BSO offence must still be proven to the court, unless the child admits guilt. This means proving that the non-compliance occurred 'without reasonable excuse'. And third, if the BSO offence is proven / admitted, then the courts have a wide range of sentencing options at their disposal. While punishment is indeed a possibility, it is also within the courts' power to try to solve problems which may have contributed to the child's non-compliance. This includes holding services to account for any failures on their part. All these issues are discussed in section 2.4. However, given that none of them would arise, in the first instance, without non-compliance by a child, it is first necessary first to interrogate the concept of 'compliance', and explore the factors which have been shown to affect children's compliance with criminal justice orders.

2.2 Compliance with criminal justice orders in the community

2.2.1 Types of compliance

In his key theoretical contribution to the literature on the role of 'offender compliance' in determining the success or failure – or 'effectiveness' – of community sentences, Bottoms (2001) distinguishes between two principal types of compliance. The first is what he calls 'short-term requirement compliance', which simply refers to one's compliance with the statutory requirements of a given court order. In the context of youth justice, some examples of this type of compliance may be: participating in reparative activities; attending supervision sessions at the arranged time; or adhering to a curfew. The second type of compliance Bottoms identifies is 'longer-term legal compliance'. This type of compliance is more profound, as it implies voluntary compliance with the criminal law.

It seems clear that this second type of compliance should be the ultimate aim of all criminal justice systems and interventions. For what better way to prevent offending –

which is the principal statutory aim of the Youth Justice System in England and Wales[32] – than through supporting those who have offended to become compliant with the criminal law? It is important to note, however, the distinction between aiming to 'prevent offending' and aiming to increase voluntary compliance with the criminal law. Having the former as the key policy aim may indeed be facilitated by the latter, but it also leaves the door open for coercive mechanisms of crime prevention, such as use of custodial sentences and various other constraints on / deprivations of liberty. Such interventions may temporarily prevent the commission of new offences, but they are unlikely to succeed in securing longer-term voluntary compliance with the law (McGuire, 2010).

If the ultimate aim of criminal justice systems should be to facilitate longer-term compliance with the law (or desistance from offending), what is the role of Bottoms' first type of compliance in achieving this end? It may be argued that short-term compliance with criminal justice orders may increase the likelihood of longer-term compliance with the law. Robinson and McNeill, however, contend that this is too simplistic, and that the notion of 'short-term compliance' with criminal justice orders (community sentences) requires dissection (2008, 2012). There is an important distinction to be made, they argue, between 'formal' and 'substantive' compliance with a community sentence. They note that it is entirely possible for someone to go through the motions of an order (formal compliance) without really *engaging* in any meaningful way (substantive compliance). Those whose compliance is only 'formal' – e.g. doing the bare minimum to avoid being breached – are unlikely to have experienced any significant shift in their general orientation or attitudes towards offending and the law (*ibid.*). In other words, superficial compliance with criminal justice orders does not necessarily increase one's likelihood of becoming law-abiding.

This distinction between formal and substantive compliance is recognised by the Youth Justice Board for England and Wales (YJB). The YJB's emphasis on the effective *engagement* of young people in the YJS (see, e.g. YJB, 2010; 2019a) is important for at least two reasons. First, it raises questions about what ought to matter for the 'enforcement' of criminal justice orders: the quantity of compliance, or the *quality* of compliance? A child might miss half their statutory sessions every week but, due to the quality of their engagement in the sessions they do attend, make significant progress in relation to 'intermediate outcomes' for making positive change, such as motivation, optimism, and resilience (Williams, 2018). Should they be breached for failing to turn up to half of their

[32] As according to section 37 of the *Crime and Disorder Act 1998*.

appointments, even if they are making progress towards achieving longer-term compliance with the law?

A second reason that the YJB's emphasis on effective engagement is important, is that it charges Youth Offending Teams with the responsibility for ensuring that the order is delivered in such a way that is conducive to the child's engagement (see MoJ and YJB, 2013 and 2014). At a basic level, this may include taking action to ensure that any barriers to formal compliance are removed or mitigated – e.g. by offering lifts to appointments, undertaking home visits, scheduling appointments around other commitments (YJB, 2014). But enabling the child to meaningfully engage requires more than this. It means ensuring that a child can *benefit* from the interventions, not just attend them. Despite the centrality of 'risk' and 'addressing offending behaviour' in the *National Standards* and accompanying *Case Management Guidance* which were in force at the time of this study (MoJ and YJB, 2013, 2014; see also section 2.3.3 of this chapter), YOTs have considerable freedom to decide on session content and delivery. Some of the work done by YOTs in England and Wales is intended to enhance the well-being of children, for example by giving them more opportunities to develop skills and interests, and by exposing them to positive relationships and pro-social role models (Williams, 2018; Ugwudike and Morgan, 2019). This is seen as key to their (re)integration into wider society and their capacity to live law-abiding lives.

It is imperative, therefore, that these interventions are delivered in such a way that is suitable to each child's needs, strengths, and abilities, to enable meaningful engagement (substantive compliance). It is not enough to aim for formal compliance, as this devalues the purpose of the interventions – that is, from a 'children first' perspective, to improve the child's life chances. Participating in drama workshops, for example, could help young people to build confidence, learn to work as part of a team, and perhaps provide a therapeutic mechanism for them to deal with issues that have affected them. But if the style, format, or content of the drama workshops are inaccessible to them, then they will not benefit from them as they will be unable to meaningfully engage. Achieving some degree of formal compliance is evidently a necessary precursor to pursuing substantive compliance, but it is not sufficient to enable young people to benefit from the interventions.

2.2.2 Reasons for compliance (and non-compliance)

If YOTs should be aiming to maximize substantive compliance by young people, it is useful to consider *why* people comply in the first place, and what mechanisms underpin compliant behaviour. Bottoms (2001) offers four different reasons why people comply with rules or requirements, and the mechanisms which promote them.

The first is 'instrumental / prudential'. The person who complies based on instrumental or prudential reasons does so based on a 'cost-benefit' calculation about the consequences of non/compliance (similar to Rational Choice Theory). The underlying mechanism for this type of compliance is the use of incentives and disincentives. In relation to criminal justice orders, 'breach' could be a disincentive (discouraging children from refusing to comply with the terms of their order), while the prospect of early revocation of an order, or the opportunity to achieve a meaningful qualification or skill as part of the order, could be an incentive (motivating them to comply).

The second type of compliant behaviour identified by Bottoms is 'normative'; that is, compliance based on the acceptance of, or belief in, a norm. There are three mechanisms by which this type of compliance may arise: moral values (e.g. a belief that it's important to make up for the harm caused); attachment to particular people (e.g. not wanting to do anything that might (further) jeopardize relationships with loved ones); and perceived *legitimacy* of the rules or requirements, and of the exercise of authority by the actors who impose and enforce them.

The third type of compliance is 'constraint-based'. Bottoms (*ibid.*) identifies three types of constraints which may bring about compliance. The first are physical constraints: these may be naturally-occurring (e.g. illness), but can also be externally-imposed (e.g. by incarceration). The second are restrictions on one's *access* to potential sites of non-compliance with the law, as exemplified by situational crime prevention techniques. The third type of constraint are what Bottoms describes as 'structural' – where someone is "cowed into submission by coercion inherent in a power-based relationship" (2001:93).

The fourth and final reason Bottoms identifies for compliant behaviour is 'habit' or 'routine'. While routine compliance may arise from patterns of being and living which were *initially* influenced by rational calculation or normative commitment, the gradual engraining of compliant behaviour into a routine means that the person's compliance is no longer based on a conscious decision. Although Bottoms distinguishes between 'routine' and 'habits' – habits are described as "settled inclinations to comply with certain laws"

(2001:94), implying that habits are more *selective* than routines – the lack of conscious decision-making involved in this type of compliance is shared by both habits and routines.

In sum, Bottoms claims that people comply based on one or more of the following reasons: because they believe they have *more to gain* (or less to lose) from complying than from not complying; because they believe that they *should* comply (based on moral principles, attachment to other people, or because they recognise the legitimacy of the rules and those enforcing them); because they are *forced* to comply; or because they are *used to* complying, so no longer think about it.

For Robinson and McNeill (2008, 2012), however, the strongest influence on compliant behaviour is *legitimacy* – especially the perceived legitimacy of the *authority* of those enforcing the rules or requirements. They argue that a supervisee on a community sentence may well consider the terms or requirements of their community sentence to be fair and reasonable (legitimate), but that they may refuse to comply with the requirements if they perceive that their treatment by their supervisor is unfair or unreasonable (see also Case and Haines, 2015; Haines and Case, 2015). This is so even if they know that there will be negative consequences. In other words, it is the perception of proper exercise of formal authority which is the overarching influence on compliance.

Based on this argument, Robinson and McNeill offer a dynamic model of compliance with community sentences. According to this model, the stronger the supervisee's perception of the legitimacy of their treatment by their supervisor, the greater or more profound their compliance with the order. This ranges from total non-compliance at the negative end of the 'legitimacy spectrum', through to formal compliance, then substantive compliance, and then 'long-term legal compliance' at the positive end of the spectrum. Drawing on Braithwaite's work on 'motivational postures', or attitudes, towards tax compliance and regulators (2003), Robinson and McNeill (2012) associate each dimension of compliance with particular *attitudes* towards compliance. These attitudes are: commitment, capitulation, resistance, disengagement, and game-playing. The first two are what Braithwaite (2003) calls postures of 'deference', the latter three postures of 'defiance'.

Unsurprisingly, the three postures of defiance are associated with non-compliance. However, acknowledging that the relationship between attitudes and behaviours are more complex (e.g. people may dislike authority but still obey it, and *vice versa*), the authors state that non-compliance may also be accompanied by postures of deference. Formal compliance is primarily associated with 'capitulation', although it may also be accompanied by any of the other four attitudes. Both substantive compliance and longer-

term compliance are primarily associated with 'commitment', though may also be associated with 'capitulation'.

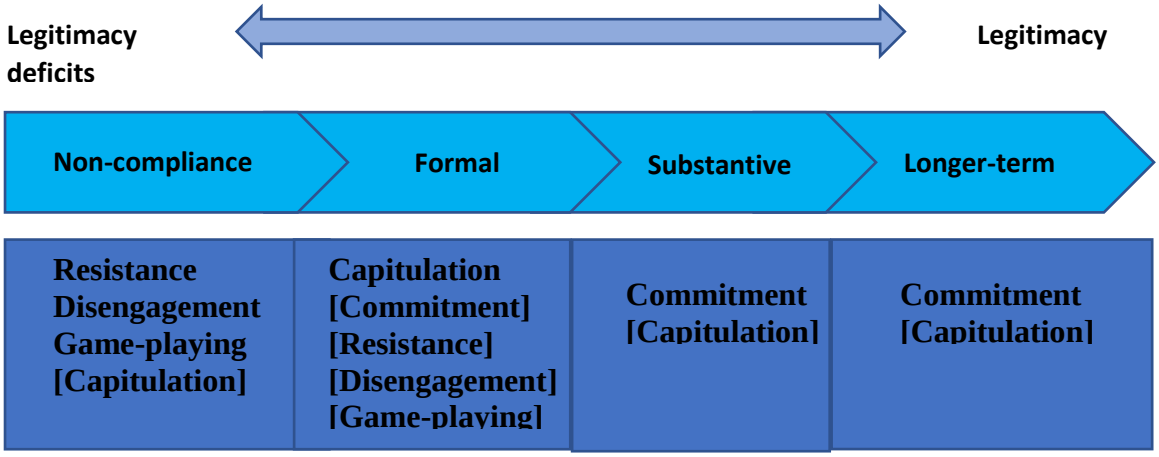

Figure 1. Dynamic model of compliance – adapted from Robinson and McNeill, 2012.

So how are Bottoms', and Robinson and McNeill's theories of compliance reflected in the Youth Justice System? What do we know about the reasons for, and attitudes towards, (non)compliance among young people on criminal justice orders? This is difficult to assess given that there has only been one study on compliance and breach in England and Wales which has asked young people in the YJS for their views (Hart, 2011a).

Nonetheless, Hart's study suggests that non-compliance by young people primarily stems from various personal and socio-structural *barriers* to compliance, rather than any particularly strong beliefs or rational calculations about whether or not to comply. Young people who had been breached generally displayed a greater combination of adverse personal and socio-structural circumstances at a higher intensity than children who successfully completed their orders, which, Hart contends, significantly affected their actual or perceived ability to comply with their orders. Living arrangements appeared to have the greatest impact on compliance: "the four children who were said to come from a relatively stable, supportive home had a significantly better history of compliance" (p.vi). Most of the children who had been breached had experienced the care system, and/or otherwise 'chaotic', unsupportive, or even abusive living arrangements.

The over-representation of children in the YJS who have spent time in the care system is well-established (Laming, 2016), and there is plenty of evidence documenting the instability and insecurity which is so often a prominent feature of their living arrangements (e.g. Staines, 2016, 2017; Hannon et al., 2010). Hart reports that the difficulties these circumstances created for compliance with statutory orders were often

compounded by a history of misusing substances; multiple school exclusions; and a variety of mental health problems, and, although less frequently, cognitive or developmental difficulties (Hart, 2011a).

These findings were corroborated in a more recent study of breach by Grandi and Adler (2016), based on an analysis of the case files of young people who had breached their orders compared to those who had not. Grandi and Adler found that having one or more breach of statutory order (BSO) conviction was strongly associated with "lack of support or conflict at home, LAC status, substance use…" (p.222) and that those who had been breached differed from other children who offended by "having more difficult and unsettled home and personal circumstances" (*ibid.*). Similar findings were also reported by Bateman (2011), whose study suggests that young people who are breached are "more likely to lead chaotic lives, to suffer mental ill health, or to misuse drugs or alcohol" (p.179). These findings bear a striking resemblance to those of a study into young people in the YJS whose offending is 'prolific'. This study found that, often, these young people had "complex, chaotic and difficult life circumstances often overlaid by the misuse of alcohol and other substances" (Johns et al., 2018:vii; see also Welsh Government and YJB, 2014).

Hart (2011) notes that lengthier and more intense orders often increased the likelihood of non-compliance. She argues that many of the children who were subjected to such orders were being "set up to fail" (*ibid.*; p.vii and 58). This is a recurring theme among critics of the Intensive Supervision and Surveillance (ISS) requirement, which can be attached to a Youth Rehabilitation Order (YRO) as a 'direct alternative to custody', or to the licence period of a Detention and Training Order (DTO) and/or other custodial sentences. It demands 20 – 25 hours per week of the young person's time, depending on the intensity of the programme.[33] During the first half of the ISS requirement (three or four months, depending on the intensity), the young person must have two statutory 'contacts' with the Youth Offending Team (YOT) *per day* – including on the weekends – and will be subject to an electronically-monitored curfew and daily surveillance checks (MoJ and YJB, 2013). By contrast, a 'standard' criminal justice order (i.e. without an ISS requirement) will, at most, require eight statutory contacts per month, but can be as infrequent as once per month (*ibid.*).

[33] There are three levels of intensity to the ISS requirement: "extended", which demands 25 hours per week of the young person's time for the first four months, reduced to 15 hours per week in the fifth and sixth months, followed by 5 hours in the seventh and eighth months; "Band 1", demanding 25 hours per week from the young person for the first three months, reduced to 5 hours per week for the next three months; or "Band 2", which demands 20 hours per week for the first two months, followed by 10 hours per week in the third month, and 5 hours in the fourth, fifth and sixth months (MoJ and YJB, 2013 and 2014).

Another reason identified in Hart's study for non-compliance was that some children had difficulty understanding what was required of them. Studies have shown that young people in custody present with learning / intellectual disabilities, communication disorders, attention-deficit/ hyperactivity disorder, and/or autism spectrum disorder at between six to 25 times the rate among young people in the general population (see Hughes et. al., 2015). In other studies, YOT practitioners have reported significant concerns about children's capacity to fully participate in interventions specifically because of a lack of understanding (Talbot, 2010). In 2012, the Royal College of Speech and Language Therapists produced a dossier of evidence indicating that over 60 per cent of young people within the YJS had speech, language, and communication needs and that this was "significantly impairing their ability to engage with interventions provided" (Taylor et al., 2015:6). Hart reports that young people's ability to understand the terms of their orders was hindered by the fact that, in all but one of the six YOTs involved in her study, "Written materials used with children [were] excessively formal and use[d] legalistic language that most will not understand" (2011:55).

According to Hart, most of the young people *wanted* to comply (i.e. they possessed an attitude, or 'motivational posture', of 'commitment' towards the order), but lacked the ability, or perceived ability, to do so:

> "The children who took part in this study wanted to comply, to leave their offending behaviour behind and to have a 'normal life'. The fact that they had such difficulty in doing so was not caused by defiance but a much more complicated set of factors." (Hart, 2011:vii).

This is in line with Robinson and McNeill's observation, that:

> "…analysis also suggests the counter-intuitive possibility that non-compliant offenders might, nonetheless, possess underlying postures of deference (capitulation or commitment), but lack the means to actually *behave* compliantly." (2012:377; emphasis in original)

From the limited evidence on (non)compliance by young people in the YJS, it seems that, far from being a rare case, the possession of the *will* to comply without the *means* to do so is commonplace among young people who are breached. While there was some evidence of Bottoms' notion of 'instrumental/prudential' compliance in Hart's findings too – she

notes that, for some, fear of going back to court or to prison was a motivating factor, as was the prospect of early revocation or other rewards if they did comply – it seems that the main influence on (non)compliance were personal and socio-structural factors.

What, then, if anything, promoted compliance? This is where Robinson and McNeill's emphasis on legitimacy becomes highly relevant. Hart observes that the likelihood of compliance would increase if the young people perceived that their YOT workers cared about them and treated them fairly. She quotes one young person saying: "If they didn't show they cared, I wouldn't care – I wouldn't come." (Hart, 2011:51). Some of the ways that YOT workers were perceived as 'caring' or being 'fair' included attempts to mitigate barriers to compliance (e.g. by travelling to meet the child, rather than expecting the child to travel to the YOT), being flexible with appointments (e.g. not threatening breach for being late), and being respectful towards the child.

This resonates with Ugwudike's findings in her study of adults' (non)compliance with community sentences (2012). Ugwudike found that compliance with community sentences was most likely to be bolstered or undermined by supervisors' response to three types of potential barriers to compliance. The first type was 'practical', which included things like childcare issues, problems with substance misuse, and accommodation difficulties. The second type was 'structural', which refers to the supervisor's ability to work around stringent policy requirements which are not conducive to a good worker-client relationship (e.g. by not rigidly applying the formal enforcement framework). The third type was 'relational', which simply refers to the quality of the interactions and the relationship between supervisor and supervisee. A 'good working relationship' was seen as one based on "empathy, egalitarianism, honesty, and respect" (p.333), and was more conducive to encouraging compliance. By contrast, approaches to supervision which were perceived to be "disrespectful, dictatorial/or domineering… lacking in empathy and intrusive" (p.334) were likely to antagonise or alienate the supervisee.

Elsewhere in the literature, improved levels of engagement by supervisees in both adult and youth justice settings have been linked to the employment of specific evidence-based practice skills (e.g. Lipsey, 2009; Raynor et al., 2014; Trotter, 2013). In their study of three Welsh YOTs' practice integrity (as measured by their adherence to the 'risk, need, and responsivity' principles of rehabilitation[34]), Ugwudike and Morgan (2019) summarise these 'core correctional practices' as follows (p.235):

[34] See, for 'Risk, Need, Responsivity' principles of rehabilitation, e.g. Andrews, Bonta and Hoge (1990); Andrews and Bonta (2007); Bourgon and Bonta, (2014); Bonta and Andrews (2017).

- **Prosocial modelling:** Modelling prosocial attitudes and behaviour using child-friendly role plays to encourage young people to learn new behaviours, including through the use of **effective reinforcement** (such as praise and rewards) and **effective disapproval** (showing disapproval in a non-blaming way immediately after negative behaviour/speech and explaining reasons for disapproval);
- **Problem solving:** Working collaboratively with young people to identify problems, elucidate goals, explore solutions, formulate a clear plan and evaluate the plan;
- **Prosocial skills building**: Working collaboratively with young people to identify and practise new prosocial skills;
- **Effective use of authority:** Clarifying rules and guidelines, reinforcing desired attitudes and behaviours, and maintaining an adequate balance between the caring and controlling dimensions of practice – for example, being encouraging and respectful even when compliance issues arise;
- **Cognitive restructuring:** Helping young people learn and practise the skills required for replacing risky thoughts and feelings associated with offending behaviour, with prosocial alternatives;
- **Relationship practices:** Showing optimism about young people's capacity to achieve positive change, focusing on solutions not problems, being non-judgemental, showing respect, empathy and warmth;
- **Motivational interviewing:** Eliciting self-motivation by developing discrepancies between the young person's current and desired states and using questioning rather than confrontational techniques to counter resistance; and
- **Interagency communication/use of community resources:** Facilitating access to social welfare services that help address personal issues and structural disadvantages.

Ugwudike and Morgan found that all three YOTs scored highly in the relational dimensions of these practices, and in their communication with other agencies/use of community resources. However, they also found that the other core practices were lacking, especially those related to the 'responsivity' principle. In particular, YOTs scored very low on identifying individual barriers to participation and engagement and adapting interventions accordingly (2019:248). Failing to identify and mitigate barriers to participation and engagement clearly threatens the practice and achievement of 'children first' youth justice, as there is a risk of children being 'responsibilised' for circumstances which are beyond their capacity to change and not being able to benefit from the

interventions. While employing these skills / practices is not sufficient to ensure compliance by young people (as this may be impeded by external factors such as living arrangements), it is likely to promote and help sustain young people's engagement.

The significance of perceived legitimacy for compliance with criminal justice orders is not only relevant to the working relationship between YOTs and young people. A recent report by the Centre for Justice Innovation (CJI) and Institute for Crime and Justice Policy Research, Birkbeck (ICJP) on young people's experiences of the Youth Court suggests young people's perceptions of *procedural* fairness affects their likelihood of complying with court orders (CJI and ICJP, 2020). They reported that young people who felt that they had been treated fairly in court were more likely to place legitimacy in the outcomes, which would increase the likelihood of compliance with those outcomes. Four 'pillars' which were necessary for procedural fairness were identified: (i) helping the young person to understand the process; (ii) providing the young person with a voice in the process; (iii) treating them with respect; and (iv) building their trust in the neutrality of the process.

Based on the limited evidence, it seems that perceived legitimacy certainly has an important influence on young people's *attitudes* towards compliance, and, for some, on their behaviour too. However, it is also evident that, for others, perceived legitimacy of the relationship between them and their YOT workers, and/or of their treatment in court, is not sufficient to enable compliant *behaviour*, as this is affected by the more fundamental issue of the insufficient mitigation of personal and socio-structural barriers to compliance.

2.3 The purpose of 'breach'

Before turning to scrutinise the legislation, policies, and guidance on breach in the Youth Justice System, it is important to consider the notion more broadly. Clearly, breach is a mechanism for enforcing court orders. But what is/are its purpose(s)? Who is affected, and why does it matter? As with the previous discussion on compliance, it is necessary to consult the literature in probation practice (or the 'adult' criminal justice system), given the dearth of literature on breach and compliance in the YJS. Five 'purposes' of breach which emerge in the literature are identified and discussed in this section: individual accountability; service accountability to the courts; public protection; punishment; and setting boundaries.

2.3.1 Individual Accountability

Accountability is conveyed in the literature as a reason for 'breach' in two different ways. The first concerns the accountability of the individual to the court (and the criminal law). It is the idea that a person who is convicted and sentenced for an offence is obliged to serve that sentence (Ferguson and McNeill, 2012). Proponents of this view argue that community sentences would be meaningless without a mechanism for enforcing them, as, unlike custodial sentences, those subjected to a community sentence could simply refuse to turn up (see e.g. probation officers' views in Deering, 2011; Annison et al., 2008). On this basis, breach can be understood as a mechanism for coercing people into complying with the requirements of their orders to ensure that 'justice is done'.

2.3.2 Service Accountability to the courts

The second type of accountability concerns that of the services responsible for implementing / delivering the community orders – that is, the probation service and YOTs. This explanation of breach essentially concerns maintaining the courts', and by extension, the government's and the public's confidence in the 'robustness' of community-based sentences (Hedderman and Hough, 2004). The inception of the use of breach for this purpose has been widely attributed to the introduction of *National Standards for the Supervision of Offenders in the Community* by the Home Office in 1992 (e.g. Cadman, 2004; Hedderman and Hough, 2004; Deering, 2011; Ugwudike, 2012). These *Standards* introduced the presumption that a supervisee would be breached upon the third instance of non-compliance where the supervisor believed there was no acceptable reason for it (Home Office, 1992).

Deering (2011) notes that, although it had always been possible for probation officers to return probationers to court for failing to comply with the requirements of their orders, "there is no evidence to suggest that this was widespread practice before the 1990s" (p.101). To the contrary, the well-known response of the National Association of Probation Officers to the enforcement section of the 1992 *Standards* – 'The reluctant beginner's guide to breach' (NAPO, 1992:17) – has been cited as indicative of the scarcity of breach prior to the introduction of the *Standards*, and the distaste with which the idea of systematic enforcement was viewed by probation officers at that time (Hedderman and Hough, 2004; Bateman, 2011). Similarly in youth justice: research with practitioners (social workers and probation officers) who worked in juvenile justice teams / adolescent

teams within social services departments prior to the introduction of the *Standards* suggests there was a general antipathy towards breach, and that its occurrence was relatively rare (Bateman, 2011).

Nonetheless, the *Standards* prevailed – though they were not uniformly implemented (Ellis et al., 1996). A House of Commons Committee investigation into 'Alternatives to Prison' in 1998 revealed that, in 1997, only 47 per cent of probation officers clearly recorded their judgement of the un/acceptability of instances of non-compliance, and of the cases where at least three unacceptable failures to comply had been recorded, only 28 per cent were breached (Select Committee on Home Affairs, 1998). Consequently, "the proportion of relevant cases in which breach action is taken in accordance with National Standards" became a Key Performance Indicator (KPI) for probation services, with a target of 90 per cent (*ibid*., section C). Enforcement remains a KPI for the probation service, though it is not clear whether the 90 per cent target remains (HMPPS, 2018).

For youth justice, however, this KPI did not materialise. The changes to the criminal justice system brought forward by the *Crime and Disorder Act 1998* and the creation of the Youth Justice Board paved the way for a different set of KPIs for youth justice services, which, to date, have not included enforcement. That said, successive editions of *National Standards for Youth Justice Services* (YJB, 2000, 2004, 2010b; MoJ and YJB, 2013) have sought to influence YOTs' enforcement practice, with varying levels of stringency (see discussion in section 2.4).[35] It is unsurprising, therefore, that accountability to the courts – and to the inspectorates – has been cited in research with YOT practitioners as one purpose of breach (see, e.g. Field, 2007; Hart, 2011; Bateman, 2011; Thomas, 2015). It is also worth noting again that YOTs must recruit from the probation service. Therefore they will have at least one member of staff whose training is likely to have included a strong emphasis on the importance of enforcing orders. This raises the possibility of 'probation service standards of enforcement' influencing YOTs.

2.3.3 Public Protection ('risk management')

Another purpose of breach which is highlighted in the literature is public protection. This is essentially concerned with 'risk management'. Although breaching for public protection has primarily been associated with the practice of recalling to prison individuals who are

[35] Although the most recent *Standards*, however, have removed altogether any reference to breach and enforcement, stating only that YOT management boards ought to implement clear policies on "engagement and compliance with court orders" (MoJ and YJB, 2019:5).

on licence (Deering, 2011; Hucklesby, 2018), it has also been cited by YOT practitioners and probation officers as a reason for breaching those on community sentences whom they perceive to pose a 'high risk' or 'threat' to public safety (Hart, 2011). In considering why this may be considered a reason for breaching, it is useful to understand the wider context of the central role 'risk' has played in the YJS since the implementation of the *Crime and Disorder Act 1998* (CDA).

It is widely argued that the CDA's principal statutory aim of preventing offending by children was interpreted through the so-called 'risk factor prevention' paradigm (RFPP) (see e.g. Case and Haines, 2009; Robinson, 2015; Hampson, 2018). In essence, the RFPP is the view that there are universal risk factors for offending which can be clearly identified, and as such, effective means to achieve crime reduction can be formulated and implemented.[36] Part of this might include the identification and enhancement of 'protective factors against offending' (Farrington, 2007:606). Case and Haines (2009) argue that policy-level acceptance of this RFPP led to the development of systems and interventions centred on the identification and mitigation of 'risk factors' for offending, heavily neglecting the identification of 'protective factors'. Perhaps the most explicit example of this was *Asset* – the original instrument promoted by the YJB for the assessment of children who came into contact with the YJS. It encompassed "12 areas for consideration, based on researched risk factors, with the additions of a self-assessment (for the young person), a section for identifying risk of harm and vulnerability and one for protective factors (positives)" (Hampson, 2018:20). Based on the input into each section, a numerical output was produced – a 'risk score'. On this basis, the level of intervention would be determined.

Although its recent replacement, AssetPlus, shifts the emphasis to identifying 'protective factors', or the 'positives' in young people's lives, YOTs are still expected to rank children from 'low' to 'high' in relation to three types of 'risk': the young person's likelihood of reoffending; their risk of harm to others; and risks to the child's safety and/or well-being. This emphasis on risk is easily observed in the *Case Management Guidance* for YOTs which were relevant during this study. For example, case managers who supervise children on criminal justice orders are told to ensure that they "do the work identified … to reduce the risks a child or young person poses…"; and that "The focus of your work is to prevent offending and reoffending… [you] should ensure that the structures, processes and services respond effectively to the risks and needs of children…"

[36] This RFPP originated from Glueck and Glueck's (1939) study of 'juvenile delinquents', but developed further through the statistical longitudinal Cambridge Study in Delinquent Development (Farrington et al., 2006).

(YJB, 2014). The *National Standards* state that they must "ensure that appropriate plans are devised that outline interventions proposed for the young person that take into account public protection and risk of reoffending, and the safety and well-being of the child" (MoJ and YJB, 2013:29). Noticeably missing is any consideration of the risk the system poses *to* the child (Evans, 2017).

The problems associated with trying to predict future behaviour based on generalized probabilities have been discussed extensively (see Case and Haines, 2009; Armstrong, 2004; Baker, 2004, 2008; Briggs, 2013). It has been argued that the links between risk factors to criminal pathways are inherently complex, and that 'risk factors' can impact differentially; it is difficult to know which might have more weight than others at particular times and with particular population groups. By applying generalized probabilities to individuals, risk assessment can produce 'false positives': that is, inaccurate identification of presumed of 'potential' offenders who may then be subject to unwarranted intervention. Although the commentary on the limitations of the RFPP has focused largely on 'early intervention' decisions, as well decisions relating to the type and intensity of youth justice interventions, the arguments apply equally to breach decisions.

2.3.4 Punishment

Punishment is another 'purpose' of breach which is cited in probation and youth justice research, though researchers are keen to emphasise that this tends to be a minority view among the research participants (see, e.g. Deering, 2011; Annison et al., 2008; Thomas, 2015; Field, 2007). This goes a step further than the 'individual accountability' view, suggesting that breach should be used to punish the act of non-compliance itself, in addition to ensuring that the sentence for the original offence is served. This is illustrated by a quotation from one of the respondents in Deering's study: "It is a community sentence and a punishment, so there has to be consequences" (2011: 105). Thomas (2015) reports that some YOT practitioners acknowledged that they, too, (as a YOT, not as individuals), had previously used breach as punishment: "If the young person did not comply we would take them back to court very quickly, to be tough, to reinforce the consequences of their actions" (practitioner quoted in Thomas, 2015:77).

Unlike the 'individual accountability' view, breach as punishment places the responsibility for (non)compliance squarely on the shoulders of the supervisee. While using breach as a mechanism of 'individual accountability' seeks to ensure that the court order is completed, and as such clearly places a degree of responsibility on the supervisee,

the responsibility for complying is not necessarily *exclusively* that of the supervisee. For example, a YOT supervisor may be of the view that a child has not properly understood the requirements of the order or 'seriousness' of the situation; in this instance, breach may be used to get the court to reiterate and explain again to the child why they must comply. In other words, breach is used to ensure that the child complies, but in so doing, acknowledges the responsibility of the court to ensure that the child has understood what is required and why. Breach as *punishment*, however, denies that anyone other than the child is responsible for their compliance. The blame is solely on the individual for failing to comply.

2.3.5 Setting boundaries

Far more common in the research on breach is its use, or threat of its use, by practitioners to set clear boundaries in order to promote engagement with the order. Practitioners' belief in the value of the work they do with those whom they supervise, and hence a desire for supervisees to comply so that they can benefit from the work/interventions, often underpins this view of breach (Thomas, 2015; Field, 2007; Ugwudike, 2012; Deering, 2011). Breach may be used as a way of giving 'structure to chaos' – a pre-requisite to making behavioural change (Deering, 2011), and/or to bring those whose compliance has started to deteriorate 'back on track' (Hart, 2011:26).

Using breach to promote engagement might seem counter intuitive. The significance of a good worker-client relationship in achieving this end has already been established. Given the potential of breach to result in punitive or 'onerous' outcomes, it is reasonable to suggest that the relationship between the supervisor and supervisee could be undermined if the supervisee perceives that the person who is supposed to be helping him/her to complete the order has, through instigating breach proceedings, made that task more difficult. Research suggests, however, that this is not straightforwardly the case. In Hart's study, for example, children often accepted that breach was an example of boundary-setting and thus a normal part of the relationship:

> "The quality of the individual relationships with YOT staff was particularly important and compliance was enhanced if the child felt that the staff cared about them, even if this caring was demonstrated by setting limits to their behaviour." (Hart, 2011:58)

In this example, breach might be seen as an 'effective use of authority' (Ugwudike and Morgan, 2019). Field (2007) observed in his research that breach was perceived by some YOT practitioners as an effective way of setting boundaries because it "could be presented as external to the relationship" (p.316). In other words, the practitioner could make it clear to the child that they are not *choosing* to send them back to court – rather, that they *must*. In so doing, they were trying to avoid jeopardizing their relationship. Linked to this was the idea of persuading the child to improve their compliance with the order in the meantime so that this improvement could be communicated to the court and used to seek a better outcome:

> "the social worker would tell the young person 'you must go back to court because you have to but we will try to persuade magistrates that we can still work with you. But you, by your behaviour now, have to give us the opportunity to say that'." (Field, 2007:316)

These studies suggest that breach will not necessarily weaken the relationship between that child and their case manager. In fact, it could even help to strengthen the relationship by providing an opportunity for the case manager to be seen by the child 'advocating' for him/her – pleading with the magistrates to allow the child to continue working with the YOT, thus demonstrating their commitment to the child. However, the distinction between promoting engagement (promoting normative compliance) and coercing compliance (promoting instrumental compliance), remains blurred, and this is likely to be dependent on individual practitioners' approaches and attitudes towards their work with children. It seems that the potentially 'positive' effect of breach is contingent on the existence of a caring, committed, and supportive relationship between the child and case manager.

2.3.6 A reflection on the various purposes of breach: 'children first'?

Before moving on to discuss the breach process for YOTs and Youth Courts, it is worth briefly considering how the various purposes of breach just discussed square with the overarching aim of a 'children first' philosophy presented in the last chapter. How might they be compatible with the prioritization of the child's well-being and the promotion of social justice?

It seems clear that the only 'purpose' of breach identified in the literature which is concerned with the child's well-being is the fifth: breaching in order to promote

engagement with interventions which are believed to enhance the child's well-being.[37] Breaching to demonstrate service accountability to the courts (and government / public), as well as breaching for 'public protection', are less concerned with the child than they are by everybody else: the child is not the primary consideration. While the child *is* the primary consideration of breaching to punish and/or holding him/her accountable for serving his/her sentence, the child's *well-being* is not.

By contrast, breaching based on conviction that the child could benefit from the intervention if only they turned up, has the child and their well-being at heart. This is not to assume that the *outcome* of breach will promote the child's well-being: as is discussed in section 2.3.4, the potential for the courts to punish for a BSO offence should not be underestimated. Nonetheless, this basis for making the decision may reflect an intention which is compatible with a 'children first' philosophy, where the intended outcome (if achieved) mitigates any harm that may be caused by further contact with the system.

2.4 Breach: the enforcement process for criminal justice orders

Ideally, children would fully *and substantively* comply with, and in so doing, benefit from, the requirements of criminal justice orders. As was seen earlier in this chapter, however, this is not always the case. Many children experience great difficulties complying with their orders, regardless of their desire to do so. In acknowledgement of this, the *National Standards for Youth Justice Services* stipulate that YOTs must ensure "every effort is made to support the child or young person or parent/carer(s) in successfully completing all orders" (MoJ and YJB, 2013:30), and should "take proper account… of the young person's or parent / carer's individual needs" (*ibid.*). This clearly places responsibility on the YOT to enable children to comply with the requirements of the order, though the emphasis on "successfully completing" the orders, rather than "successfully engaging with the orders", frames the YOTs' responsibility in terms of enabling formal, but not substantive, compliance. This is reinforced by the *Case Management Guidance*, whose sole example of non-compliance in relation to the breach process are failures to attend statutory appointments (YJB, 2014).

Nonetheless, making every effort to support compliance is not only important while the order is being delivered. In the first part of this chapter the importance of communication – that is, ensuring that the child *understands* the requirements of the order

[37] It is not assumed, of course, that the purposes identified above form an exhaustive list of reasons for breaching.

and has a *voice* in the process – was noted. Any investigation which seeks to understand how youth justice decisions and processes affect young people's (non)compliance with, and breach of, court orders, must, therefore, start from the point at which the original criminal justice order is imposed. In cases where a pre-sentence report (PSR) is requested, the process of giving a child a voice starts even earlier – at the point at which the views of the young person are sought by the YOT. This subsection discusses some of the 'communication responsibilities' of Youth Offending Teams and of Youth Court magistrates prior to, during, and immediately after, sentencing.

2.4.1 Laying the foundations for (non)compliance: communicating with the child

Although not all sentencing hearings require a pre-sentence report (PSR), it is common for magistrates to request them from the YOT – and they *must* request one if a custodial sentence is being considered (Sentencing Council, 2017). A PSR should provide: an analysis of the offence, including the child's reasons for committing it, and factors from the child's background / circumstances which may have contributed to the offending; an assessment of "potential risks" – likelihood of reoffending, risk of harm to others, and risks to the child's safety and/or well-being; and a proposal for sentencing (YJB, 2014). The report must be based on at least one interview with the child, as well as a range of other sources (MoJ and YJB, 2013). This ought to give the child a 'voice' in the process, and moreover presents the YOT with an opportunity to start explaining the nature of the impending court proceedings to the child and their parents/guardian.

In every court hearing, whether initial, pre-trial, trial, or sentencing, magistrates must "communicate directly with children and their parents, guardians or carers" (Judicial College, 2017:105). The child should be central to the proceedings: "the child…and their parent/guardian… should be involved at all stages" (*ibid*., p.2) so magistrates must "create an atmosphere which encourages dialogue" (*ibid*, p.104). They have a statutory duty to explain to the child "the nature of the proceedings and… the substance of the charge" in language that is simple and suitable to their age and level of understanding (Rule 6, *Magistrates' Courts (Children and Young Persons) Rules 1992*). Further, when imposing a statutory order, the magistrates must explain to the child or young person "the general nature and effect of the Order" (Rule 11, *ibid.*). This includes explaining to them that they are liable to be brought back before the court (i.e. breached) if they fail to comply with the requirements of the order (Sentencing Council, 2017).

After the conclusion of the hearing, when a non-custodial criminal justice order has been imposed, a representative from the local Youth Offending Team who is present in court must explain to the child and, if present, their parent(s) / guardian, their "rights and responsibilities under the terms of the order" (MoJ and YJB, 2013:28).[38] This means explaining:

- the child's right to access services provided by the YOT and wider local area;
- the support the YOT will provide for them;
- their right to make comments and complaints, and how to do so;
- their responsibility to comply with the terms of their order, including acceptable and unacceptable absence criteria;
- what constitutes (un)acceptable behaviour; and
- what constitutes (un)acceptable timekeeping.

The YOT worker must ensure that the young person "fully understands the requirements of the order (taking into account any mental health problems, learning disabilities/difficulties, speech, language and communication needs)" (MoJ and YJB, 2013:28). The rights and responsibilities as described above must be set out in writing and a copy given to the child (and their parent(s) / guardian, where appropriate), and the child should be "encourage[d… to sign a copy of these expectations to confirm their understanding of their requirements, including details of the first appointment" (*ibid.*).

For Detention and Training Orders (DTOs), a similar process should occur when preparing for their release into the community, rather than on the making of the order. In the release preparation meeting, the child's views on their resettlement arrangements should be "gathered and considered" (MoJ and YJB, 2013:44). Immediately prior to their release, in the final review meeting, the YOT case manager must ensure that the arrangements for the licence period are "fully understood by the young person" (MoJ and YJB, 2013:44). The secure estate staff must ensure that the Notice of Supervision (which details the requirements of the community part of the DTO) is signed by the young person prior to their release (*ibid.*).

Evidently, then, there are clear expectations around the responsibility of youth justice practitioners to ensure that, when children leave court after sentencing, or are released from custody under a DTO Notice of Supervision, they (and their families)

[38] They are not required to do this when a custodial sentence is imposed because the 'enforceable' conditions (i.e. terms of 'Notice of Supervision' or licence period) have not yet been decided. For DTOs and longer-term custodial licences, this process will take place in custody in the pre-release meetings.

understand the requirements of their orders; what is expected of them and what they can expect from the YOT; and the consequences of failing to comply. This should be reinforced during their first meeting in the YOT after their release / sentencing. In this meeting, the child's allocated case manager[39] should explain how the order will work in practice. This includes specifying a plan of interventions, unless the order imposed was a Referral Order. In that case, the first meeting may be used to gather information from the child to present in a report for the community members of the 'Youth Offender Panel', which will help them to determine the specific requirements which will constitute the Referral Order 'contract' (MoJ and YJB, 2013).

The child's voice should be central to this process: the Referral Order 'contract' should be "co-produced" with the child, not "imposed" (MoJ and YJB, 2015, 2018). The Referral Order appears to be the order which affords the highest value to the voice child: there is no comparable guidance which states that the terms of Reparation Orders, Youth Rehabilitation Orders, or DTOs, should be 'co-produced' with the child.[40] This does not, of course, preclude YOTs from being guided by the child's voice in determining how best to implement the statutory requirements.

To summarize, there are numerous ways in which YOTs and magistrates are expected to promote the voice of the child, and aid their understanding of the order's requirements. Whether these mechanisms are consistently and/or effectively employed (especially at the point of considering what to do when a child fails to fulfil on part of their statutory order) will be considered in this study. The recent briefing on young people's perceptions of procedural fairness in Youth Courts suggests that, in court proceedings, at least, they are not (CJI and ICPR, 2020).

2.4.2 Breach Process: Youth Offending Teams

So what happens if a child fails to comply? It is common, in the literature on breach and enforcement in the criminal justice system (youth and adult), to read about what is tantamount to a 'three-strike rule': that is, the expectation that YOTs or probation officers should breach their supervisee after a third instance of unacceptable non-compliance (see discussion in section 2.3.2 on introduction of *National Standards*). In other words, three

[39] The case manager will most likely be a different member of the YOT to the one who is at the sentencing hearing (although there is nothing stopping case managers from attending court when one of the children they are already supervising is back for a new offence or breach).

[40] Having said that, this expectation could be seen as tokenistic, given the way in which the guidance sets out five 'themes' that should underpin every panel meeting – the "Transforming Conflict model". These five themes centre the offences / offending behaviour and 'taking responsibility' in the discussion, which is unlikely to be conducive to promoting the child's engagement.

missed appointments, and the supervisee will be back before the court. But to what degree is this an accurate representation of the process which YOTs are expected to follow? The ensuing discussion considers the breach process for criminal justice orders which was in place at the time the fieldwork was undertaken (between September 2017 and April 2019). It draws on the relevant primary and secondary legislation; the *National Standards for Youth Justice Services* (MoJ and YJB, 2013); *Case Management Guidance* for youth justice services (YJB, 2014); *Definitive Guidelines* for sentencing children and young people (Sentencing Council, 2017); and various other statutory and non-statutory guidance for courts and/or Youth Offending Teams.[41]

The first decision a case manager must make following an instance of non-compliance is whether there is an 'acceptable' reason for it (MoJ and YJB, 2013). The *Standards* do not attempt to define what constitutes un/acceptable behaviour; they require only that the YOTs develop and implement a clear policy on it. The *Case Management Guidance* states that the case manager should follow up any instance of non-compliance with the child within one working day to ask for their explanation (YJB, 2014). This investigation into their non-compliance should be "robust" as well as timely (MoJ and YJB, 2013:30). Where the instance of non-compliance is judged as 'unacceptable', the *Standards* state that "a written warning *may* be issued" (emphasis added) "which describes the circumstances of the failure to comply, states that this failure is unacceptable, and informs the young person that they are liable to be returned to court or in the case of Referral Orders, referred back to the panel, for their failure to comply" (*ibid.*).[42] Unlike previous editions, the 2013 *Standards* do not stipulate how many warnings can be issued to a young person before the YOT breaches or refers the child back to the Referral Order Panel. They do, however, state that enforcement action must be taken in accordance with the relevant legislation.

There is no legislation which gives any indication as to the process which must be followed by the YOT prior to breaching a child subject to a Reparation Order or a DTO. For Referral Orders, although the legislation does not state how many warnings a child should be given by the YOT before being referred back to the Referral Order Panel, section

[41] It is important to bear in mind the status of these various documents which influence practice. The *National Standards* and *Referral Order Guidance* are statutory guidance, while the *Case Management Guidance* is non-statutory guidance. Unlike statute, neither form of guidance is legally binding or enforceable, although there is an expectation that youth justice services adhere to statutory guidance unless they have a good reason not to. By contrast, the court *must* follow any relevant sentencing guidelines when sentencing for an offence unless it would be 'contrary to the interests of justice' to do so.

[42] If the only requirement of an order is an electronically-monitored curfew, the responsibility for issuing warning letters for "first and second level less serious violations" falls on the Electronic Monitoring Service (EMS) (YJB, 2015:6). However, it remains the YOT's responsibility to make applications to court to vary, revoke or enforce the curfew if violated (i.e. to instigate breach proceedings). For all other electronically monitored orders, YOTs are responsible for both warnings and breach action (*ibid.*). The same applies when the only requirement is unpaid work (see YJB, 2016).

26 of the *Powers of Criminal Courts (Sentencing) Act 2000* clarifies the circumstances under which the Panel might return a young person to court under breach proceedings (note that it is the *Panel* who should make the breach decision, not the YOT case manager). Section 26 states that the Panel will make a request to review the order if, among other reasons, "… it appears to the panel that the offender is in breach of any of the terms of the contract" (subsection 3b). The outcome of a review Panel convened on this basis may be that the Panel and the child agree to the continuation of the order, either in its original form or with variations. Alternatively, the Panel may decide to send the young person back to court under breach proceedings.

For YROs, Schedule 2 of the *Criminal Justice and Immigration Act 2008* requires[43] the YOT to instigate breach proceedings, if: the child has received two warnings within a 12-month period and, within the same period, the YOT is of the view that the child has "again failed without reasonable excuse to comply with the order" – unless they believe that there are "exceptional circumstances" which justify not doing so (part 2, para.4). However, the Act also enables the responsible officer to instigate breach proceedings after only one instance of 'unacceptable' non-compliance, without requiring the circumstances to be 'exceptional' (part 2, para.4, ss.3). [44]

The *Case Management Guidance* takes the legislative standards for the enforcement of YROs as the basis of its advice on enforcement practice for all four orders. Unless there is a 'serious breach of the requirements', in which case YOTs can instigate breach proceedings immediately (YJB, 2014), YOT case managers (practitioners) are advised to instigate breach proceedings after a third instance of 'unacceptable' non-compliance within a twelve-month period, although operations / YOT managers can decide not to take breach action. Crucially: "the judgement on whether or not to breach should consider overall progress on the order" (YJB, 2014: s.6). This suggests that managers should be taking into account the quality of the child's engagement, as well as the quantity of formal compliance. The *Guidance* also advise that each incident of 'unacceptable' non-compliance should be followed by the convening of a 'compliance panel' with the child in order to address any barriers to compliance.

Evidently, there is significant scope for flexibility in this breach process. It is, nonetheless, possible to discern in the YRO legislation and the *Case Management Guidance*, a semblance of a 'three-strike rule' for the enforcement of criminal justice orders. However, this is not replicated in the *National Standards* (MoJ and YJB, 2013).

[43] The *Act* states that in these circumstances, the responsible officer "must" instigate breach proceedings.
[44] The *Act* permits this – the responsible officer "may" instigate breach proceedings.

This is important to note because it is the *Standards*, after all, not the *Guidance*, that form the basis of YOT inspections. The *Standards* only require that YOTs establish and implement their own local policy on enforcement and compliance (MoJ and YJB, 2013:6), which is in keeping with the relevant legislation, and with the *Standards* themselves. They do not require the YOTs' enforcement policy to be in keeping with the *Case Management Guidance*.

More importantly, the analysis above has shown that the so-called 'three-strikes rule' is misleading: it suggests that YOTs are expected to breach a child who, for example, misses three statutory appointments, unless there are 'exceptional circumstances', or one of the YOT managers decides for some other reason not to allow the breach. What the 'three-strikes rule' fails to emphasise is that all these procedural decisions – whether to send a warning letter, whether / when to instigate breach proceedings – need only be made *if*, in the first instance, the case manager decides that the reason for the non-compliance was 'unacceptable'. This gives considerable scope for case managers to exercise 'professional discretion' (see discussion in section 2.4.4).

Regardless of the stringency with which previous versions of *National Standards* have attempted to hold youth justice practitioners to account for 'enforcing' orders (see Hart, 2010, 2011; Bateman, 2011), the fact remains that in *every* edition since their introduction in 1992 (Home Office, 1992 and 1995; YJB, 2000, 2004, 2010; MoJ and YJB, 2013 and 2019) practitioners have always retained individual agency and discretion in deciding on the (un)acceptability of instances of non-compliance. Technically, a child could fail to attend 10 appointments and violate their curfew five times in a week, and the case manager would not necessarily be failing to adhere to the 'enforcement' *Standards* if they chose not to issue warning letters and/or instigate breach proceedings. As long as they evidenced that there was an acceptable reason or explanation for the non-compliance, and had this approved by a manager, they would be acting in accordance with the *Standards*. Of course, one would query whether they were meeting their obligations to the child. If a child struggled so much to comply with the requirements, it is likely that the requirements – or the relationship between child and case manager – were 'unworkable', either from the beginning, or because of a change in the child's circumstances. The *Standards* provide for this scenario as well, stating that "if one or more of the requirements of a YRO become unworkable, they must return the order to court for amendment" (MoJ and YJB, 2013:30). Alternatively, the YOT can temporarily 'suspend' the child's statutory requirements. Both these provisions enable YOTs to be responsive to children's individual circumstances, and

provides a mechanism to avoid breach proceedings where non-compliance has resulted from unsuitable requirements.

The foregoing discussion clearly demonstrates that breach is far from a certain outcome when a child fails to comply with the requirements of an order. Nonetheless, it is still a possibility. If the YOT decides to breach, they must list the case at court and prepare a breach report. Interestingly, despite a whole section of the *Standards* dedicated to report-writing, breach reports are not mentioned at all. The only reference to breach reports is found in the 'Enforcement of Detention and Training Orders' section of the *Case Management Guidance*, which states that the breach report must "detail the facts, the failures to comply and a proposal for the court to deal with the matter" (YJB, 2014: section 7). This omission in the *Standards* implies that YOTs have considerable discretion in deciding what information to include in the report, how to present it, and in making recommendations to influence the outcome of the breach proceedings (see Evans, 2016, on exercising discretion in writing pre-sentence reports).

2.4.3 Breach Process: Court

If the YOT / Referral Order Panel decides to instigate breach proceedings, the child will be returned to court for a breach hearing. Here, as with any other criminal charge, the principles of due process apply, including the child's right to legal representation. In court, the child will be asked how (s)he pleads to the charge. If (s)he pleads 'not guilty', the prosecution (on behalf of the YOT) will have to prove, to the criminal standard,[45] that he:

> "fail[ed] without reasonable excuse to comply with the requirements of an existing statutory order" (MoJ and YJB, 2017a:2)

In other words, the prosecution must prove beyond reasonable doubt that (a) the instances of non-compliance occurred, and (b) that they did so *without reasonable excuse*. Although 'reasonable excuse' is a common legal defence, there is no uniform definition of what it actually means. It is likely, therefore, to fall to the judgement of the magistrates / judge whether the reason(s) for non-compliance constituted a 'reasonable excuse'. This is important to note, because the way the term 'reasonable excuse' is received by those who interpret it is crucial. While it may be understood in a legalistic way among legal professionals, Youth Court magistrates are not trained in law (although they are advised by

[45] *West Yorkshire Probation Board v Boulter [2005] EWHC 2342* adjudicated that a breach of a community order must be proved to the criminal standard.

a legal advisor). As such, it may be that their understanding of the term 'excuse' is representative of a widespread understanding found in common parlance: "something said to conceal the real reason for an action" (Oxford English Dictionary, 12th edition, 2011). This bears little resemblance to the definition of 'explanation' – "a reason or justification for an action of belief" – or of 'reason' – "a cause, explanation, or justification / good or obvious cause to do something" (*ibid.*).

Thinking about non-compliance in terms of 'excuses', rather than 'reasons' or 'explanations', then, has the potential to demean the real difficulties experienced by some young people in complying with their orders. It also has the potential to reduce the likelihood of attempts by the court to try to tackle those difficulties. For if a young person provides a 'reason' or 'explanation' for failing to do something, that reason, or cause, can be addressed. If, on the other hand, a young person provides an 'excuse' for failing to do something, even if that 'excuse' is accepted, it may be less likely that magistrates will actively seek to identify and address the underlying difficulties, since those difficulties are framed using language that is suggestive of insincerity. By extension, it would also reduce the likelihood of children's services, such as those acting as corporate parents, being held accountable for any failings on their part. This could result in an outcome where the child is 'responsibilised' and blamed for the failures of services to ensure the child's most basic rights, which is contrary to the 'children first' principle of service accountability.

Regardless, if the child admits to, or is proven 'guilty' of, the BSO offence, there are four 'sentencing' options available to the court. First, they may choose to allow the order to continue as it is. They may take this opportunity to talk to the child and reinforce the importance of compliance with the order (Sentencing Council, 2017).

Alternatively, the court can amend the order – that is, the order will be allowed to continue, but some changes will be made to the specific requirements or its length (subject to the upper limit for order duration – see Appendix 3). For example, they may increase the number of reparation hours, or impose additional requirements, e.g. a curfew. If the order which has been breached is a DTO, they may impose a further period of custody of up to three months, or the length of time from the date the breach was committed until the end of the order, whichever is shorter (Sentencing Council, 2017).

A third option for the court is to revoke the existing order and re-sentence the child for the original offence. There is no up-tariffing requirement: for example, a child who has breached a YRO could, at the magistrates' discretion, be re-sentenced to a Referral Order. Magistrates cannot impose a sentence that would not have been available to them when sentencing for the original offence, with one notable exception. If the young person is

deemed to have 'wilfully and persistently' breached a YRO, they may be sentenced to YRO with an Intensive Supervision and Support (ISS) requirement – which is a 'direct alternative to custody' – even if the original offence was not imprisonable. If this YRO with ISS is 'wilfully and persistently' breached, the court may impose a four-month Detention and Training Order (Sentencing Council, 2017). The *Sentencing Guidelines* state that: "A child or young person will almost certainly be considered to have 'wilfully and persistently' breached a YRO where there have been three breaches that have demonstrated a lack of willingness to comply with the order that have resulted in an appearance before court." (Sentencing Council, 2017: para. 7.17).

The fourth and final option, which may be chosen in addition to any of the previous options, is to sentence the child for the BSO offence, usually by way of a fine. For breaches of Reparation Orders and DTOs, the upper limit to the fine is £1,000; for Referral Orders and YROs, it is £2,500 (Sentencing Council, 2017).

Some of these sentencing options are quite clearly punitive in their intent. It is hard to deny the punitive nature of sanctions such as the imposition of fines, or of a custodial sentence for a non-imprisonable offence, and/or the extension of the custodial element of a DTO. Despite stating in the introduction that "the primary purpose of the youth justice system is to … promote re-integration into society rather than to punish" (Sentencing Council, 2017:4), the *Sentencing Guidelines*, in relation to breaches of YRO, assert that where non-compliance arises primarily from "reporting or similar obligations", the "most appropriate response is likely to be the inclusion of (or increase in) a *primarily punitive requirement* such as the curfew requirement, unpaid work, the exclusion requirement and the prohibited activity requirement or the imposition of a fine" (*ibid*., p.34, emphasis added). This appears to be in direct contradiction to the statement made two paragraphs later: "The primary objective when sentencing for breach of a YRO is to ensure that the child or young person completes the requirements imposed by the court." (*ibid.*). The reader is left to guess what the 'primary objective' of sentencing for the breach of any other criminal justice order is.

Evidently, breach provides an opportunity to punish. However, it is by no means the only option. To the contrary: a breach hearing may be used as a problem-solving mechanism to identify and mitigate barriers to compliance. The options to amend the order or resentence the child to a different order may enable punishment, but equally they can be used to ensure that the requirements of the order are appropriate and feasible for the child. For example, the court could change (reduce) curfew hours, or remove and/or replace requirements which seem 'unworkable'. That said, if it is clear to the YOT that the

problem with compliance arises from unworkable requirements and/or those which are too onerous or no longer appropriate, the YOT can make an application to the court to amend the order without instigating breach proceedings. It is arguably unjust to instigate breach proceedings in order to seek an amendment to the order, since it carries with it an accusation against the child.

However, a breach hearing may provide a valuable opportunity to check whether services have sufficiently exercised their duties to the child. The *Sentencing Guidelines* state that:

> "A court must ensure that it has sufficient information to enable it to understand why the order has been breached and *should be satisfied that the YOT and other local authority services have taken all steps necessary to ensure that the child or young person has been given appropriate opportunity and the support necessary for compliance*." (Sentencing Council., p.34, emphasis added)

This is crucial in terms of the 'children first' principle of holding services accountable for implementing their duties to the child. However, the court's requirement to check that the YOT and all local authority services have taken "all steps necessary" to support the child's compliance surely arises at the wrong point in the hearing – *after* the plea / finding of guilt for breaching a statutory order. This question – whether the child was given the *support necessary for compliance* – should surely be considered *before* determining whether the order has, in fact, been breached. If the child's non-compliance was affected because the child did not receive the necessary support, this would surely constitute a "reasonable excuse" – in which case, there should be no breach conviction.

2.4.4 Professional discretion in breach decision-making

It ought to be evident that the breach process – from the initial decision to label an incident of non-compliance as 'unacceptable', through to the sentencing decision of the court – affords both YOTs and magistrates significant scope for exercising discretion, or autonomous judgement. The benefits and importance of professional discretion have been widely documented: avoiding process-driven, box-ticking, 'bureaucratic' practice; promoting practitioner skills; and enabling children's individual circumstances to inform intervention decisions and delivery, are but a few of the reasons cited (see, e.g. Souhami, 2007; Pitts, 2001; Goldson, 2010; Hoffman and McDonald 2003). The perils, however, of

endowing ‘street-level bureaucrats’ (Lipsky, 1980) with unchecked power to make decisions about individuals’ lives have also been duly noted (e.g. Gelsthorpe and Padfield, 2003; Evans, 2006).

A frequently cited example of the ‘dangers’ of professional discretion is the burgeoning number of young people placed in custody during the 1970s as an indirect result of the increasing use by social workers of ‘welfarist’ interventions for children ‘in need’ (Thorpe et al., 1980; Haines and Drakeford, 1998). The introduction by the *Children and Young Persons Act 1969* of Care Orders and Supervision Orders – welfare-based sentences which were available both for young people who had offended, and for those deemed ‘in need’ – afforded considerable discretion to social workers for intrusive intervention in young people’s lives. Their belief that ‘formal intervention’ was fundamentally a good thing, combined with the lack of due process and deprivation of a legal right to a meaningful defence in civil cases (where Orders were recommended and imposed on the basis of perceived ‘need’, rather than ‘deed’), had a net-widening effect – resulting in more young people being drawn into the formal criminal justice system for intervention, or ‘treatment’ (Haines and Drakeford, 1998; see also Chapter 1, section 1.1).

This highlights the potential for ‘professional discretion’ to result in excessive or disproportionate interventionism. It also highlights the risks of ‘unintended consequences’ of well-meaning interventions (Kerslake, 1987). Breach seems a clear contender for resulting in ‘unintended consequences’: the breadth of sentencing options and the extent of magistrates’ discretion in deciding how to sentence makes breach inherently risky. Conversely, unrestricted or unchallenged discretion may result in entirely ‘intended’, consequences, such as when a PSR author deliberately constructs a (misleading) ‘image’ of the child in order to persuade the magistrates/ judge to impose a particular sentence (Evans, 2006; 2016). The near total absence of guidance or *Standards* on writing breach reports makes this a very real possibility for case managers who decide, for whatever reason, to breach a child. Evidently, this power can be skilfully used to pursue outcomes in the child’s best interests; but equally, it could achieve quite different outcomes, deliberately or unintentionally.

2.5 Conclusion

This chapter has demonstrated that children who breach criminal justice orders seem more likely to have experienced multiple deprivations of their rights than those who do not. Albeit limited, the evidence suggests that service failure, especially in relation to children

in care and 'in need', is prevalent among those who breach their orders. The same studies suggest that these deprivations and adversities make compliance more difficult for these children, and that even though they may possess the will to comply, their often 'chaotic' circumstances may make *formal* non-compliance inevitable – especially when the requirements of their orders are onerous. While positive relationships with YOT workers can help to promote their engagement (formal and substantive compliance), even this may not be sufficient to enable them to avoid breaching their orders.

What these studies fail to emphasise, is the distinction between children who breach their orders (i.e. are convicted of a BSO offence), and children who simply fail to comply. While failing to comply is a prerequisite of a BSO conviction, a BSO conviction is not an inevitable outcome of failing to comply. By failing to emphasise this point, the immense power of the YOTs to influence the outcomes of non-compliance is glossed over, as is due process. While both probation and youth justice research focus on the curtailment of practitioner discretion via the introduction and ascendancy of *National Standards*, the fact that practitioners have *always* retained discretion to adjudicate on the un/acceptability of non-compliance is side-lined. Given that the ensuing breach process hinges on the decision by practitioners to label instances of non-compliance as 'unacceptable', it is not clear why such minimal attention has been directed towards this fact.

This discretion, complemented by the flexibility inherent to the breach process in the 2013 edition of the *Standards*, appears to give YOTs the freedom to respond to children who fail to comply in a manner consistent with a 'children first' philosophy – that is, in a way that promotes and prioritizes their well-being (see Chapter 1, section 1.5). This does not preclude breaching the child (see sections 2.3.5 and 2.3.6); but the potential benefits and harms should be considered carefully (including the potential harm of further system contact). This is especially important given the risk associated with placing decision-making power in the hands of the magistrates, whose *Sentencing Guidelines* clearly allow for punitive as well as problem-solving sentencing decisions. That said, this discretion may also enable breach to be used by individual practitioners for a range of other purposes which are not underpinned by a 'children first' philosophy, such as the various other 'purposes' of breach identified in this chapter – namely, punishment, individual accountability, service accountability, and 'public protection'.

This section concludes the literature review undertaken for this study. The thesis now turns to discuss the planning and process which shaped the research.

Chapter 3: Methodology

3.0 Introduction

As stated in the introduction to this thesis, the overarching aim of this study is to investigate the extent to which the breach practice of Youth Offending Teams (YOTs) and their associated Youth Courts in Wales is consistent with a 'children first' philosophy of youth justice. While this overarching aim was clear from the early stages of the study, little else was clear until an initial review of the existing literature had been undertaken. In essence, a 'literature review' was employed as a method of developing the study's strategy, design and specific research questions. These questions, to reiterate, are:

1. How can the notion of 'children first' youth justice be understood in the context of Welsh policies, and how is it interpreted by Youth Offending Teams and Youth Court magistrates in Wales?
2. What influences children's (non)compliance with criminal justice orders?
3. How do Youth Offending Teams and Youth Court magistrates respond to non-compliance with criminal justice orders, and what guides their decisions? Specifically, is there any evidence of a 'children first' philosophy underpinning their decisions?
4. What impact do these decisions have on the children concerned, and what are the implications for youth justice locally and nationally?

This chapter describes and discusses the research process which enabled these questions to be addressed. While this dissertation has, so far, observed the formal academic style of writing in the third person, in this chapter, there are deliberate lapses in favour of the first person. This is because parts of the chapter are intentionally reflexive and therefore require use of the first person to adequately capture the subjectivity of what is being described. Describing my own reflections and learning throughout the research process in the third person would be unnatural and pretentious.

The chapter is organised as follows. Section 3.1 discusses the research strategy and design of this study. Section 3.2 describes the process of sampling and negotiating access to the YOTs, while section 3.3 highlights the ethical considerations which featured in the research process. Section 3.4 describes the measures taken to prepare for the fieldwork, and section 3.5 identifies and justifies the research methods employed in the study. Section

3.6 discusses the methods employed to analyse the data, and section 3.7 concludes the chapter with a consideration of the limitations of the research process and how things could have been done differently.

3.1 Research strategy and design

This section takes as its starting point Bryman's distinction between research strategy and research design (Bryman, 2016). He describes the former as "a general orientation to the conduct of social research" (p.32) and the latter as "a framework for the collection and analysis of data" (p.40). The strategy, therefore, should inform the design, which in turn should inform the choice of research methods.

Although there is a quantitative element to this study (see design and mixed methods discussion below), the strategy of this study is predominantly qualitative. Bryman (2016) argues that qualitative and quantitative research strategies differ in ways much more fundamental than the classic distinction made between the latter's emphasis on quantification and the former's emphasis on words. Three of these fundamental differences, he argues, are as follows: ontological orientation; epistemological orientation; and the strategies' principal orientation in terms of the relationship between theory and research (*ibid.*).

The relationship between theory and research in this study is best described as inductive. In other words, the purpose of the research was not to test some theory-driven hypotheses by collecting and analysing data (as in a deductive approach); rather, data were collected and analysed *in order* to generate findings from which theory and practice might be developed. That is not to say, however, that theory had no influence on the collection and analysis of data. It would be disingenuous to suggest that the theoretical knowledge I possessed prior to embarking on the study, which – incidentally – substantially expanded during the very deliberate process of reviewing existing literature, did not influence the parameters of my research, the types of questions put to the participants, and my subsequent analysis of the data from the field. To the contrary, the continuous process of analysing data as and when they emerged helped to refine many of the research tools and influenced the direction of the research.

My ontological orientation leans heavily in favour of social constructionism. Essentially, this position asserts that social phenomena and meaning are produced through social interaction and are continually being revised by social actors. That said, the influence of external constraints on social behaviour cannot be dismissed: for example, the

behaviour of workers within an organisation may well be influenced by peer interaction and organisational culture, but it is likely to be influenced by rules, regulations, and hierarchical structures too. Such formal properties of organisations constitute an external 'reality' – a reality that exists independently of the social actors. As Becker (1982) says of culture: it has a reality that "persists and antedates the participation of particular people" (p. 521). However, while the existence of rules, regulations, and other 'external' influencers of behaviour may be taken as an independent 'reality', the *substance* of those formal structures may be affected by social interaction and changed over time. The main implication of this constructionist perspective for the social researcher is that, by virtue of being a social actor, his / her own account of the social phenomenon which is under investigation is also a construction – and therefore cannot be regarded as definitive (Bryman, 2016).

As regards my epistemological orientation, it can broadly be described as 'interpretivist'. Simply put, this position rejects the application of the philosophical doctrine of positivism to the study of social 'reality' on the grounds that the fundamentally different subject matter of social sciences necessitates a different logic of inquiry to that of the natural sciences. Positivism holds that all valid knowledge (or 'truths') can be verified through value-free sensory (empirical) observation of phenomena and by the application of mathematical / logical proofs. These phenomena are governed by natural laws and it is the job of the researcher to generate and test hypotheses to enable the discovery and explanation of these laws.

Proponents of 'sociological positivism', perhaps most notably Comte (2009 [1865]) and Durkheim (1982 [1895]), argued that the 'scientific method' which was / is characteristic of natural science inquiry could – and must – be applied to the domains of social science inquiry. However, if it is accepted that social 'reality' is constructed via social interaction, and that during the process of social interaction individuals are continually interpreting the symbolic meaning of their environment and subsequently act on the basis of their imputed meaning (see 'symbolic interactionism' in Blumer, 1962), then the logic of 'positivism' is arguably incompatible with the study of such phenomena. For what is being investigated is not social 'facts' but rather the meaning given by individuals to the social world(s) that they inhabit, which must first be understood in order to be explained (see Weber's concept of *Verstehen* in Weber, 1947). That said, social phenomena may be conceived of as 'social facts' for some purposes – for example, to assist with shaping sampling strategies. As is evident in section 3.2, statistics on breach of statutory order offences were assumed to represent the prevalence of offence convictions (a

social fact and a useful starting point for developing sampling strategies), even though the fact of the conviction was not assumed to give a truthful representation of the prevalence / occurrence of the *constituent elements* of the offence.

An 'interpretivist' epistemology seeks to understand the meaning of social realities from the perspectives of those inhabiting (and constructing) those realities. In relation to breach offences, while it is possible to take 'as fact' the records of convictions for these offences[46], an interpretivist lens must be used to investigate whether, in fact, these offences were committed, since this is a matter of interpretation by a multitude of social actors. There is, however, one obvious caveat which ought to be highlighted in relation to taking this 'interpretivist' stance, namely, that I too – as a researcher – form my own interpretations of events. So while I did my utmost to respect and accurately represent the participants' perspectives, to disregard my own interpretations and accept others' views uncritically would have been impossible, and arguably undesirable.

The design of the study can best be described as a comparative/ dual (multiple) case study (Yin, 2009). The 'cases' – two Youth Offending Teams (YOTs) in Wales who, despite sharing common statutory frameworks, differed according to their governance, internal structure and staff profile – were studied through in-depth data collection, involving multiple sources of information, and a mixed methods approach (Creswell, 2013). These methods included: interviews with young people, YOT practitioners and managers, YOT Referral Order Panel volunteers, and Youth Court magistrates; focus groups with YOT practitioners and managers; analyses of case files and other data from the YOTs' case management systems, as well as of other relevant documentation; and ethnographic notes based on participant and non-participant observations, and informal conversations. The justification for each method is found in section 3.5 of this chapter; for now, suffice to say that the underpinning rationale for using these various methods was to enable triangulation of data.

Employing a primarily qualitative approach to this study enabled the investigation to go beyond analysing the recorded breach decisions and outcomes for children who fail to comply with their orders, to understanding the *rationale* for those decisions, and as such, the extent to which they were underpinned by a 'children first' philosophy. As was discussed in the previous chapter, 'breach' is not an automatic consequence of failing to comply with an order. It is influenced by many variables and factors whose nature and relationship are complex. A qualitative approach enabled those factors and their

[46] With the caveat that there are limitations to the data which question their accuracy and reliability (see sections 3.2 and 4.1).

interactions to be identified and explored in depth. While this is clearly a strength of the study, a predominantly qualitative focus might suggest a weakness in a failure to build in methods of testing the findings. However, this was not the case.

First, the use of multiple methods enabled a degree of testing of the internal validity of the data (by triangulation). Second, the study deliberately included a quantitative element against which some of the qualitative data could be tested. This was achieved by the development and use of observation sheets and case file 'checklists' to systematically collect and collate quantifiable data. And third, by opting for a dual, as opposed to single, case study design, data collection was replicated across sites, which enabled the independent confirmation of, or challenge to emerging constructs (Baxter & Jack, 2008). These layers of testing contributed to the robustness of the findings.

Nonetheless, it is recognised that there are limitations to the adopted approach, not least in relation to the relatively small number of participants involved (compared to quantitative studies), and the differences in internal structure, staff profiles, and local governance of YOTs. This limits the generalisability of the findings, which cannot be said to be representative of the state of breach practice across the whole of Wales. That said, all YOTs in Wales (and in England) share a common statutory framework, and they are all bound by the same criminal justice legislation. They are further guided by *National Standards* and *Case Management Guidance*. It is expected, therefore, that some elements of breach practice will be common to all YOTs.

3.2 Sampling and access

Three levels of sampling were applied in this study, each drawing on principles of purposive and (some) convenience sampling. In the first instance, the research sites – Youth Offending Teams – had to be selected. Once access to the YOTs had been negotiated, case files had to be selected for analysis. The third instance of sampling related to the recruitment of staff members, volunteers, magistrates, and young people for individual interviews and focus groups.

3.2.1 YOT sample (research sites) and access

Prior to making first contact with the YOTs, I contacted the then director of the Youth Justice Board Cymru (YJB Cymru) to inform him of my proposed study and to ask whether the Board would be interested in supporting it. A representative of the YJB Cymru

subsequently responded with a letter endorsing the study. This formal expression of support from the YJB proved invaluable to securing access to YOTs. It seemed to confer a greater degree of legitimacy on the study in the minds of the YOT managers whom I approached. Only one of the YOT managers who were contacted declined to participate, on the basis that the YOT was inundated with ongoing research studies at that time.

Although this study ultimately involved only two YOTs, my original intention was to undertake a multiple case study of four YOTs. The way in which this halving of case studies came about is important to explain, not least to avoid giving false impressions about the straightforwardness of the research process. It is also important to acknowledge my own oversight of important information in the early stages of the study. The ensuing discussion, therefore, provides a chronological account of the sampling process, starting from the initial intention to undertake four case studies.

Given the importance I attributed to understanding the daily functioning of the YOTs, and to building a good rapport with staff and young people whom I hoped would participate in the study, my supervisors and I decided that it would be wise to immerse myself for three months in each participating YOT. Mindful of the time constraints of the study (three years), four case studies seemed an appropriate number: I would spend three months undertaking the research in each YOT, and after the conclusion of each case, I would take two weeks to write an interim report for the YOT to inform them of some of the emerging findings. For a three-year project (plus a 'write-up year'), allocating 14 months for fieldwork seemed reasonable.

The selection of four YOTs was based on an original analysis of annual youth justice statistics published by the Ministry of Justice and YJB. The local-level data on 'breach of statutory order' (BSO) offences were compared to the number of criminal justice orders imposed in each YOT area to give what I have called a 'YJB breach rate' – that is, BSO offences as a proportion of the criminal justice orders imposed (see table below). This, I believed, gave a rough indication of the proportion of criminal justice orders which were breached in each YOT. Although I later discovered that this was false – the YJB's BSO offence category included breaches of civil disposals, as well as criminal justice orders – this was not known to me during the sampling phase. It had not occurred to me that breaches of civil disposals would be included in the same category, given that breaches of civil disposals constitute separate criminal offences. It was only once I started analysing the data from the first YOT's case management system (CMS) that I started to suspect that something was amiss: there was a discrepancy between the number of breaches of criminal justice orders recorded on the YOT's CMS and those recorded by in

the official MoJ/YJB statistics. Subsequent contact with the YJB confirmed that the 'statutory order' category included a whole range of civil disposals as well as criminal justice orders. I later identified many more problems with the statistics which seriously undermine their utility (discussed in Chapter 4, section 4.1).

Nonetheless, ignorant of this information while sampling YOTs, a 'YJB breach rate' was calculated for each YOT. This analysis was conducted for the five most recent annual publications at that time (MoJ and YJB, 2013b; 2014; 2015b; 2016; 2017b). The same calculation was performed on a national (Wales) level. YOTs were categorised as follows: those whose 'YJB breach rate' was consistently higher than the national average; those which were consistently lower than the national average; and those which fluctuated. The table below shows the results of this analysis (the red figures highlight 'YJB breach rates' that were higher than the national average; the blue figures highlight those lower than the national average).[47]

[47] Note that prior to 2014, there were 18 YOTs in Wales: the number reduced to 15 following the merger of Swansea, Neath Port Talbot, and Bridgend (to form Western Bay YOS), and the merger of Rhondda Cynon Taf and Merthyr YOTs (to form Cwm Taf YOS). To ensure consistency across the 5 years of data analysed, the data from the individual YOTs which merged were combined (for each merger) and an average 'YJB breach rate' calculated between them. In other words, the calculations were done as if the individual YOTs which merged in 2014 had always been merged.

Table 1. 'YJB breach rate' for each Youth Offending Team in Wales for the five years beginning 2011/12 and ending 2015/16, relative to national (Welsh) average.

	Year				
YOT	**2011/12**	**2012/13**	**2013/14**	**2014/15**	**2015/16**
1	14.7	11.4	15.2	10.8	11.2
2	15.7	Missing data	19.9	20.0	22.7
3	8.1	4.2	10.8	9.5	0
4	13.9	33.3	0	18.2	10.0
5	11.7	15.8	20.6	21.8	23.6
6	13.0	11.5	15.0	5.2	3.5
7	8.1	6.8	19.2	4.7	6.1
8	38.7	18.1	27.0	10.9	9.8
9	19.0	33.9	34.2	46.9	44.6
10	14.9	20.1	27.9	24.8	29.9
11	5.9	10.9	19.4	18.9	25.0
12	1.6	6.7	4.2	5.0	12.5
13	16.4	13.2	10.1	14.0	10.9
14	15.8	7.4	13.3	15.0	15.3
15	17.1	25.0	21.9	25.7	28.7
All Wales	**15.2**	**14.4**	**18.3**	**16.6**	**18.8**

The next consideration was the number of criminal justice orders imposed in each YOT. These were categorised into ‘high’, ‘middle’, and ‘low’ ranges. On this basis, four YOTs were selected:

- YOT A had a high number of criminal justice orders and a consistently low ‘YJB breach rate’;
- YOT B had a high number of criminal justice orders and a consistently high ‘YJB breach rate’;
- YOT C had a low number of criminal justice orders and a consistently low ‘YJB breach rate’;
- YOT D had a low number of criminal justice orders and a consistently high ‘YJB breach rate’.

Having identified these YOTs, access had to be negotiated. Initially I sent an e-mail to all four YOT managers asking whether they would be interested in participating in the study. Three weeks later, I had received only one response – a positive one from YOT C, asking to postpone their involvement for six months because they were too busy at that time. After confirming this via e-mail with the manager of YOT C, I decided to contact the remaining three YOTs over the phone. The managers of YOTs A and B provisionally agreed to allow the YOTs to participate in the study, but the manager of YOT D declined, stating that the YOT was already involved in many research projects.

Next, I sent a formal e-mail to the three YOTs who had agreed to participate, attaching the research proposal, ethics statement (and letter of approval from the University's Ethics Panel), and the letter of support from the YJB. The order of YOT participation which I negotiated with the respective managers meant that the two YOTs with a high number of statutory interventions (YOTs A and B) would become the first and second research sites, followed by YOT C (which had a low number of statutory interventions). At this point I did not feel the need to approach another YOT to replace YOT D – I had decided that I would contact YOT D again in six or seven months to see if the circumstances affecting their ability to participate had changed.

As it happens, this was not necessary, as I decided to limit the study to the first two YOTs. Multiple factors influenced this decision. First, by the time I had entered YOT B, it had become evident the sampling of YOTs was based on an analysis of YJB data which turned out to be false. It made little sense, therefore, to enter another YOT based on these false criteria. Second, the period of three months that I had originally envisaged spending with each YOT proved too brief to enable a thorough investigation. Learning to navigate the YOTs' case management system (CMS) took a long time. Given my unfamiliarity with the YOT setting, it took a while to orientate myself and identify all the various aspects of their work which were pertinent to this study. Building relationships with the staff also took time; this was partly due to a lack of experience, but also because of a lack of confidence in my 'researcher' role. Also, the fact that YOT A had multiple offices in different locations impacted my ability to observe meetings, court hearings, and panels. Often, I was not informed of the meetings / hearings and, for a long time, I lacked the confidence to ask.

Although interviews with staff were arranged and conducted with relative ease, attempts to recruit young people for interviews proved much more difficult. This was partially due to the elusive nature of the young people whom I hoped to interview (i.e. they

were the ones who tended not to turn up to statutory meetings at the YOT), but was further constrained by my ethics statement (see discussion in section 3.3). By the end of the initial 14 weeks I spent in YOT A, it was clear to me that I would need to return to the YOT at a later point to address the gaps in the data.

Many of the difficulties I experienced in YOT A did not recur in YOT B. I was fortunate that YOT B used the same case management system (CMS) as YOT A, as I did not have to learn to navigate a new system. Moreover, I had learned some valuable lessons from YOT A which I put into practice in YOT B. For example, rather than proceeding immediately to extract data from the CMS in YOT B, I prioritised building relationships with the staff. Although I was recording my own observations in my research log, no 'official' data were collected during the first two weeks. Rather, I spent this initial period simply talking to all the different staff – showing an interest not only in their work but in them and their lives more broadly. Contributing to a coffee / tea fund was a small but important gesture which promoted my acceptance by staff. However, some difficulties remained, not least relating to securing interviews with young people, and being informed in advance of panel meetings which were highly relevant to this study.

During my initial period in YOT B, after realising the flaws in my sampling strategy, I considered the possibility of undertaking a third case study based on geographical sampling: YOT A was urban, YOT B post-industrial; so a third, rural, YOT, would have completed the spectrum of geographical differences in Wales. However, the number of criminal justice orders imposed in the rural YOT areas in Wales (according to the YJB data) were so low that is it unlikely that much data on breach would be available in these areas. After discussing this with my supervisors, we decided that it would be more beneficial to focus in greater depth on the two YOTs which had already been accessed. As such, both YOTs were re-visited after the initial three-to-four-month period for the purpose of verifying and collecting further data. I also returned to both YOTs to deliver a presentation on the report I wrote for each of the YOTs, which provided another valuable opportunity for data collection – this time by undertaking a focus group with the staff. In sum, although only two YOTs participated in the study in the end, the data collected were far richer due to the additional time spent at each YOT. Higher quality data enabled me to present much more detailed findings to the YOTs, the YJB, and in this thesis.

3.2.2 Case files sample

The primary source of information on the day-to-day decision-making of YOT workers in relation to (non)compliance was found in the young people's case files. As such, case files were selected for analysis. In each YOT, the case files of eight young people who had breached at least one criminal justice order were analysed, alongside a control group of eight young people who had no breach offences on their record. The case file selection process is outlined in this subsection, while the purpose and justification of using case file analysis as a research method is discussed in subsection 3.5.1.

A cross-section of the YOT's statutory caseload – that is, the caseload of young people subject to criminal justice orders – was taken, and each case file was examined for BSO offences where the order breached was a criminal justice order (henceforth referred to as 'breach of criminal justice order' (BCJO) offence). In YOT A, 12 young people had at least one or more BCJO offence on their record at the time the cross-section was taken; in YOT B, there were only eight. In YOT A, the 12 case files which contained one or more BCJO offence were filtered down to eight by excluding those whose BCJO offences had occurred while being supervised by a staff member who no longer worked at the YOT. In YOT B, all eight of the case files were reviewed. These case files were combed for commonalities which could be applied to the selection of the case files for the control group. All of those with one or more BCJO offence on their record were male; and they were all aged 16 years or older when the cross-section was taken. These criteria were applied to the case files of those with no BCJO offences, as well as a further necessary criterion of having at least one previous criminal justice order on their record prior to the current one. This ensured the least number of variables between the two groups and thus maximised their comparability.

Even though none of the girls in either YOT had a breach history when the cross-sections of the statutory caseloads were taken, I decided to undertake a partial analysis of their case files too (9 in YOT A, and 4 in YOT B). This decision was made after noting a comment made by a handful of staff at YOT A in which they suggested that they might be less inclined to breach a girl for non-compliance due to a perception that they had 'greater welfare needs'. As such, the girls' case files were analysed in the same manner as the boys' for criminal justice, personal, and demographic factors which might corroborate or question the claim that they had greater welfare needs, as well as to look for other factors which might explain why none of the girls had a breach history (see findings in Chapter 4, sections 4.4 and 4.5).

3.2.3 Interviewees sample

The young people who were interviewed were selected from the 32 case files which were analysed, based on the principle of convenience sampling. Much more emphasis was placed on trying to secure interviews with young people with a 'breach history' (i.e. those with one or more BCJO offence on their record) than those without. Eventually, eight of the young people with a breach history were interviewed (four from each YOT), and two from the control sample (both from YOT B).

The Referral Order Panel volunteers and Youth Court magistrates who were interviewed were also selected based on convenience sampling. There were few opportunities to ask them to participate (especially the magistrates) so any opportunity was taken.

The YOT practitioners and operations managers who were interviewed in YOT A were not selected by myself (see discussion in section 3.5.2). The operations managers were self-selected and the practitioners were selected by one of the operations managers. As such it was not possible to tell whether they were selected purposively, randomly, or just based on convenience. This was an important consideration when analysing their interview data: they might have been selected by the operations manager *because* of their views or level of knowledge, in which case, their interview data would be skewed / not representative of the diversity of views across the YOT.

To overcome this possibility, I took three deliberate actions: first, I spent a lot of time in informal conversation with the interviewees after their interviews, asking casual questions or 'advice' about breach. By doing so, it was possible to identify any inconsistencies in what they had stated while 'performing' an interview, and what they stated when in a less formal environment. I also re-interviewed three of the staff (although this was primarily due to concerns over the quality of the initial interviews – see discussion in section 3.5.2). Third, I spent a lot of time talking to other staff members about their views on breach, and eventually facilitated a focus group with 10 staff members – seven of whom had not participated in an interview. Here, the diversity of views on breach among the YOT staff was formally captured, reinforcing the many informal conversations I had had with them previously.

In YOT B, I ensured that all the staff who were interviewed were selected by myself, and that each practitioner who was asked to participate was supervising one or more of the young people whose case files were analysed. This was to enable me to ask questions about specific examples of their decision-making recorded in the case files, as

well as to gain a more detailed and nuanced understanding of the factors in young people's lives which might be affecting their compliance with their order. While this was done in YOT A too, one of the practitioners interviewed in YOT A was not supervising any of the young people whose cases were analysed. This did not compromise the quality of the data, however, as this person's views on 'hypothetical' examples (based on examples from the case files) in terms of what they would have done / what they thought should have been done was equally valuable.

3.3 Ethical Considerations

Ensuring that the research process is ethically and morally defensible is as important as ensuring that the study is methodologically robust. To this end, I was required to submit an application for 'ethical approval' of the study to Aberystwyth University's Research Ethics Panel prior to entering the field.[48] The application, alongside the Panel's comments and my responses to those comments, and the formal letter of approval from the Panel, were shared with the YOT managers while negotiating access.

Various guidance on social research ethics were consulted while drafting the application, including those issued by the British Society of Criminology (BSC, 2015); the Social Research Association (SRA, 2003); and the Economic and Social Research Council (ESRC, 2015). Further, specific guidelines on the involvement of children in research was sought from the National Children's Bureau (NCB, 2011). Essentially, each provide a framework of principles based on shared values and experiences which should inform, but not dictate, the individual ethical judgements of researchers. They highlight the competing nature of many ethical principles and acknowledge that researchers may need to depart from some principles – but on the basis of "deliberation rather than of ignorance" (SRA, 2003:10).

The fundamental tension in social research which is highlighted in the guidance is between advancing knowledge, on the one hand, and minimizing the risk of harm (physical, emotional, psychological) to participants and protecting their rights, on the other. Special consideration should be given to the types of harms that could unwittingly be inflicted on participants who may be classified as 'vulnerable', for example due to their "age, social status, or powerlessness" (BSC, 2015:5). Children and young people in the YJS certainly fall into this category of 'vulnerable people', but this should not be used as

[48] The Ethics Panel in the University of South Wales also approved the application following my transfer in September 2017.

an excuse to exclude them from participating in research – especially when the subject being studied directly relates to and affects them.

To the contrary, the very fact that they are a disempowered and often marginalised group should motivate the conscientious researcher to make more of an effort to find a way of including them in the study while ensuring, to the greatest degree possible, that their involvement will bring them no harm. In line with the UNCRC, the National Children's Bureau states that children and young people "are social actors who have a right to be involved in research about issues of concern to them" (NCB, 2011:4). In my view, failing to involve them in this study would not only demonstrate a disregard for their rights; it would also dilute the study's contribution to the advancement of knowledge. For although the primary focus of the study is the decision-making of YOT staff and magistrates, children and young people influence, and are affected by, their decisions. As such, their views are essential to enable a proper understanding of the process and implications of breach decision-making.

Five main themes of research ethics were addressed in my application to the Panel, namely: voluntary participation; informed consent; harm to participants; privacy; and deception. Each of these are considered in the following subsections, both in relation to the adults (YOT staff, ROP volunteers, and magistrates) and in relation to the young people who participated in the study. It must be stated that ethical considerations were by no means 'put to one side' after obtaining ethical approval from the Panel. Principles of research ethics were continuously contemplated throughout each stage of the study – the planning, fieldwork, and dissemination process. In fact, after eight months in the field I submitted a substantial revision of my ethics statement to the Panel with a view to increasing the potential for interviewing young people (see discussion in section 3.3.1.2). It should also be stated that no matter how thoroughly I thought I had prepared for the emergence of ethical quandaries, different and often unpredictable challenges presented themselves throughout the duration of the fieldwork, some of which will be discussed in the following subsections.

3.3.1 Voluntary participation

A central principle in all the guidance referenced above is that every participant's decision to take part in the study should be voluntary. In particular, the researcher has a duty to ensure that "there is no explicit or implicit coercion" affecting potential participants' decision (BSC, 2015:7). During the planning phase of this study, I had two main concerns

in relation to upholding this principle. First, should I offer some form of 'payment' to those who were interviewed? Second, given the multi-layered process of obtaining consent from the young people, how could I ensure that their parents / guardians and / or YOT workers did not exercise any undue influence on the young people's decisions to be interviewed? A third concern arose during the first week of fieldwork: how could I ensure that operations managers were not putting pressure on practitioners to agree to be interviewed? Each of these concerns are discussed below.

3.3.1.1 Payment for participation

There are many competing views as to the defensibility of payment for participation. Wardaugh (2000), for example, in her study of street homelessness, justifies paying the homeless people who participated in her research on the basis of dignity: time is a commodity for which people are usually paid (along with labour), so the same respect should be afforded to the homeless people who gave up their time to help with the study. Distinctions have been made between the different purposes of payment, for example payment as an 'incentive'; as 'compensation'; as 'reimbursement'; and as a 'reward' or 'token of appreciation' (see for example, Draper et al., 2009; Mduluza et al., 2013; Wendler et al., 2002).

For Alderson and Morrow (2004), offering payment as an incentive is simply coercive – a clear contravention of the standards of the 1947 Nuremberg Code[49] which state that potential research participants should not be put under pressure or persuasion to take part. Payment as reimbursement for expenses or as compensation (e.g. for missing a day's work) is generally regarded as less controversial, as is payment as a 'reward' or to show appreciation for participants' help (Morrow, 2009). But the distinction between payment as 'reward' and payment as 'incentive' is far from clear-cut: rewarding a child for taking part in a study may well come as a welcome surprise to that particular child, but news travels. A friend of the child may hear of this reward and decide to take part on that basis, in which case the 'reward' for one child also becomes an 'incentive' for another to participate.

Another consideration in relation to payment for participation is the type of payment offered – not all payments have to be pecuniary. It would arguably be unethical to provide the young people in this study with money – regardless of whether the intention

[49] Although the Nuremberg Code was created with particular reference to clinical research, Alderson and Morrow (2004) clearly believe that the same principles should apply to any research involving human participants.

was to provide an incentive or a reward. This is because most of the young people had substance misuse issues and openly talked about spending their 'benefits' on drugs. Giving them money while knowing with near certainty that it would be spent on harmful substances would, in my view, be immoral and akin to condoning self-harm. Thus, I found it more helpful to think in terms of ensuring that the participants 'get something in return', rather than providing 'payment'. In relation to the YOT staff, this was straightforward. I arranged with the YOT managers that I would provide a report to the YOTs in which the preliminary findings of the study would be shared, enabling them to learn, discuss and develop practice in ways they saw fit based on the evidence. Thus, the time they volunteered was reciprocated by the time I spent writing the reports and 'rewarded' by the information contained in them.

As for the young people, after much contemplation I decided against offering a tangible 'incentive' or 'reward'. Rather, I strove to ensure that the experience of being involved in the study was itself 'rewarding'. For example, I spent a lot of time with the young people prior to asking them to take part (e.g. joining in with 'reparation' activities, and/or chatting to them prior to a court hearing). During the interviews, I tried to ensure that they 'took the lead' and felt empowered by it. Encouraging them to choose where to sit in the interview room (they all chose the 'wheelie chair', where their case managers would usually sit) proved to be a simple but effective way avoiding, or at least minimising, any power imbalance between us. I also provided plenty of snacks and drinks for them to have whenever they wanted; and assured them that their opinions were as important, if not more so, than those of the staff in the YOTs.

The fact that eight of the ten young people who were interviewed talked for at least 20 minutes – including one young person with severe ADHD whom staff reported unable to 'sit still' for more than five minutes, and who paced around the room and spun on the chair for the duration of the interview – was, in my opinion, testament to how comfortable they felt taking part in the interview. This was despite the fact that nine of the ten interviews took place in a YOT office – a place that many of the young people stated that they disliked. I also ensured that the interviews were conducted during the time allocated to a one of their statutory sessions – supervision, reparation, or another activity – so that the young people did not have to give any of their 'own' time; rather, we used the time during which they were supposed to attend the YOT. In sum, I strove to ensure that the children 'benefited' from participating in the study by making the interviews an enjoyable and hopefully 'empowering' experience, and at no 'cost' (time) to the children.

3.3.1.2 Pressure on young people to participate

To mitigate against the possibility of parents / YOT workers pressurising the young people to participate in the study, I ensured that prior to each interview, I went through the information sheet and consent form with the young people and asked them if they still wanted to participate. If I felt that they had been pressured to take part, I would emphasise the fact that they could leave at any time and refuse to say anything – that they could even just stay for two minutes and eat some snacks. This is in line with the NCB's guidance, which states that:

> "Consent to collect data at any given time should not be assumed just because prior consent to participate in the study has been given. It is particularly important to satisfy yourself that the child understands that their participation is voluntary and that they have a right to refuse or withdraw from the research at any point without adverse consequences." (NCB, 2011:32)

As it happened, this concern never materialised. If anything, some YOT workers seemed reluctant to try to arrange interviews with young people, and many parents, for various and complex reasons, were not engaged with their children's involvement in the YOT. Moreover, all the young people with a breach history were aged 16 years or older and very few lived with their parent(s). However, while the young people were not pressurised into taking part, an instance arose whereby a young person was prevented from taking part due to his parents withdrawing their consent. This young man was 17 years of age and both he and his parents had initially agreed to his participation in an interview, but on the day of the scheduled interview, his parents withdrew their consent. Thankfully, the young person was not particularly 'bothered' about this development, but it made me think how damaging and patronising the situation could have been for him if he had been very eager to talk to me – as indeed were some other young people. This, combined with the many futile attempts at getting consent from parents, provided the impetus for me to consider amending my ethics statement to incorporate a principle of 'presumed consent' in relation to the parents (or social worker, depending on who had parental responsibility) of the young people. After getting approval from my supervisors and the YOT managers, I revised my ethics proposal to change the method of obtaining parental consent from an 'opt-in' to an 'opt-out' system for the parents of those aged 16 years or older. This revision was subsequently approved by the Faculty Ethics Chair. In this way, by doing nothing,

parents would be allowing their child to participate in the study. Interviews with young people were much more forthcoming after adopting this new approach.

3.3.1.3 Pressure on practitioners to participate

My concern over practitioners' participation emerged during the first week of fieldwork in YOT A. It became evident that because I had stated in my correspondence with the operations manager[50] that I was hoping to interview four practitioners in addition to two operations managers and the manager of the YOT, the second operations manager who had agreed to participate also selected practitioners for interview. This came as a surprise to me as I had expected that I would spend some time getting to know the different practitioners first before asking them if they were willing to be interviewed. However, as the decision had already been made, I did not feel as if I could turn around and ask to do things differently. The best I could do, therefore, was – as with the young people – to check with the four practitioners prior to the interview whether they were still willing to participate, and to emphasise to them that they could always change their mind about taking part and/or withdraw their contribution from the study.

As my relationship developed with the practitioners and operations managers in YOT A, it became obvious that they would not have minded at all if I'd asked to interview different practitioners based on an initial review of the case files. An increasingly positive and strong relationship with the staff allayed my concerns about them potentially being pressured into participating: most of the staff in the YOT (including all who had been interviewed) became increasingly open and interested in talking to me about breach. Nonetheless, when corresponding with YOT B to make arrangements, I ensured that I was very clear about my intention to ask practitioners to take part in an interview only after spending time familiarising myself with them and their work (which also gave them an opportunity to get to know me too).

3.3.2 Informed consent

The Economic and Social Research Council (ESRC) defines the principle of informed consent as "giving sufficient information about the research … so that prospective participants can make an informed and free decision on their possible involvement"

[50] The YOT Manager who was originally contacted delegated the responsibility for facilitating the study to this operations manager. As such, the research plan was arranged with this operations manager.

(ESRC, 2015: 29). Considerations relating to 'free' or voluntary participation have already been discussed, so this subsection explores the essentials of enabling potential participants to make an informed decision.

Fundamental to the notion of "informed consent" is ensuring that the information has been *understood* by the consenting participant, not simply received, read and/or heard. According to the British Society of Criminology (BSC), a researcher is duty-bound to explain to potential participants "as fully as possible, and in terms meaningful to participants, what the research is about, who is undertaking and financing it, why it is being undertaken, and how any research findings are to be disseminated" (BSC, 2015:6). This information, along with information about confidentiality, data protection, and the contributions being asked of the participants, was contained in the information sheets and consent forms which were prepared prior to entering the field and disseminated to various potential participants for their contemplation.

In line with the ESRC's guidelines, the information was provided "in a form that is comprehensible and accessible to participants … and time [was] allowed for the participants to consider their choices and to discuss their decision with others if appropriate" (ESRC, 2015:29). This was ensured by creating separate information sheets and consent forms for the different participants – YOT staff, ROP volunteers, magistrates, and the young people. Although templates were developed prior to going into the field, I sought advice from a practitioner in the first YOT about the format and language of the sheets / forms for the young people after learning that this practitioner was responsible for developing child-friendly worksheets for the YOT. This practitioner's insight was invaluable.[51] For example, I had already decided against using the term "interview" due to the potentially negative connotations associated with the word (e.g. police station, court, Referral Order Panel, etc.). Instead I had used the word "meeting". But the YOT worker was quick to point out that many "meetings" in the YOT are of a formal character, often an uncomfortable environment for the young people. A better option, we agreed, was to use the word "chat".

The low levels of literacy and high prevalence of social / behavioural / learning difficulties among the young people made it more difficult to establish whether they had fully understood the particulars of the study and their role in it. However, I did my utmost to aid their understanding of the study, their role in it, and their rights in relation to it, by

[51] Asking the practitioner's advice was further beneficial because it reinforced the point that I was there to learn from them, the experts.

talking about it during interactions *prior* to asking them to consider taking part. This gave them time to become familiar with the study and digest the information.

To maximise the likelihood of securing informed consent from all participants, I met with most potential participants[52] at least once prior to the interview to discuss the nature of the research, its purpose, and their role in it. For the adults, these discussions happened on the premises of the YOTs; for the young people, they formed part of my interaction with them in various group activity sessions. They were all subsequently given or sent a copy of the information sheet and consent form to read and digest. Before starting every interview, I verbally summarised the contents of the information sheet and the consent form and asked the participant to sign the consent form if they were happy to proceed. A significant advantage of situating myself at the YOTs' premises to undertake the research was that staff, young people, volunteers, and any visiting magistrates could ask questions about the study whenever they wanted, and had plenty of time to understand the study and contemplate whether or not they wanted to participate.

Despite appreciating the importance of securing informed consent, the frustration arising from the initial difficulties in recruiting young people occasionally resulted in being tempted to apply these ethical standards less rigorously. The following excerpt from my research log captures one occasion where such a temptation arose:

> [I was] Just chatting to [name of practitioner] about my study and said that it had proved very difficult to arrange interviews with young people. Immediately, he responded by stating that he'll "tell" one of his supervisees (who has three breaches of DTO on his record) that I "want to interview [him]". I was immediately conflicted. This would be an excellent opportunity to gain insight – too important and too rare to miss – but I could not possibly agree on the basis of the principles of informed and voluntary consent. Despite my protestations, the practitioner insisted that I should talk to the young person when he came in (his arrival was imminent). I had to think quickly on my feet. I was introduced to the young person and left in an office, presumably to 'get on' with the interview. Of course, I did no such thing. Rather, I briefly explained to the young person who I was and why I was interested in hearing his views, gave him an information sheet and consent form and asked him to take them with him and consider whether or not he'd like to take part, ensuring that he understood he by no means had to, regardless of what his

[52] With the exception of the three magistrates from YOT A who were interviewed: this was an unpredicted, *ad hoc,* opportunity. Also two of the four practitioners in YOT A – the first time I met with them was immediately prior to the interview.

> supervisor might say. We spent the next half hour chatting about rugby and food, until his supervisor came back. I explained to the supervisor that the young person was going to think about it; and that if he was happy to do it, could we do it in his next supervision (the following week). I noted the date of the supervision.

Evidently, I did not capitulate but managed to take advantage of the opportunity to start building rapport with the young person. However, it seems important to highlight just how easy it is to be tempted to dilute ethical standards to increase one's chances of securing participation. This particular case illustrates how such a temptation can be compounded when gatekeepers (in this case, the YOT practitioner) do not fully appreciate the high standards of research ethics. It was not easy to resist the pressure by the practitioner to interview the young person 'there and then', especially as I knew that he was clearly trying to help. Fortunately, this incident occurred at a later stage in my research, by which time I had enough experience to be able to think on my feet.

3.3.3 Harm to participants

The importance attributed to the researcher's responsibility to anticipate and guard against possible harmful consequences of the research process, both for the participants and for the researcher, is unambiguous: "All potential risk and harm should be mitigated by robust precautions" (ESRC, 2015:4). Harm may include "physical harms…; psychological harms: including feelings of worthlessness, distress, guilt, anger or fear-related, for example, the disclosure of sensitive or embarrassing information…; devaluation of personal worth: including being humiliated, manipulated or in other ways treated disrespectfully or unjustly." (BSC, 2015:5). While it was impossible to predict the outcome of every decision (no matter how ethically-informed), and while there is inevitably a degree of risk involved in intruding in people's lives in search of information, several precautions were taken to try to minimise the risk of harmful consequences and to mitigate against any harm that might arise.

First, my own suitability as a social researcher was put to the test both by the Disclosure and Barring Service (a DBS certificate was obtained prior to entering the field) and the University's Ethics Panel. My supervisors provided a third layer of approval – they assured me that they would not allow me to enter the field if they thought I was not ready. I too scrutinised my own beliefs, strengths and weaknesses both prior to and during the fieldwork (see section 3.4) and strove to ensure that involvement in the study was a

positive experience for all participants. I also familiarised myself with the YOTs' safeguarding procedures prior to entering the field and clarified with the YOT managers the circumstances under which I would have to breach confidentiality.

Second, due to the vulnerability of the young people – they were vulnerable by virtue of their age and also because of the intensity of disadvantages and adversities they had experienced (see Chapters 4, 5, 6 and 7) – I consulted their case managers (and sometimes other practitioners who knew the young person better than the case manager) before asking any young person if they would like to participate in the study. In essence, together we undertook a 'risk assessment' of the potential harm to the young people should they participate in the study. Given the case managers' familiarity with the young people's circumstances, they were best placed to know whether engaging in the research process would threaten their well-being. Some case managers advised against approaching some young people on the grounds that their mistrust of adults was acute and that their engagement with the YOT was already precarious. Even asking them to consider talking to another adult about their experiences of the YJS was considered to be a potentially damaging request which might compromise their relationship with the YOT. Occasionally, I suspected that case managers were overly-protective (or overly-possessive) of the young people whom they supervised. I was also aware of the possibility that some staff might be trying to protect themselves – advising against interviewing particular young people due to anticipating that they might be critical of them. Nonetheless, I respected their views and decisions on the basis of 'better safe than sorry'.

Third, the questions I asked the young people focused on their experiences and opinions of their court orders, the YOT's role in the delivery of those orders, their reasons for (not) complying, and, where relevant, the breach process and its impact. I did not attempt to delve into more personal details, such as their offences, living arrangements, family situation, or experiences of adversities and trauma. The emphasis was on the Youth Justice System and their experiences of the agents/agencies and processes within it. However, despite not asking any questions about their personal circumstances, some young people volunteered such information during their interview. On these occasions, I did my utmost to show the young person that I was interested in, and cared about, what they were saying, while simultaneously trying to avoid putting any pressure on them to continue to disclose.

Fourth, the principle of confidentiality was held with high regard. Each participant was assured that their identities would be kept confidential throughout every stage of the research process. The location of the research sites were anonymised, and when

transcribing interviews and making field notes / observations, each participant was given an identifier consisting of letters and numbers which were meaningful only to the researcher. However, this was insufficient to eliminate entirely the possibility of identification (Bryman, 2016). The SRA points out that "A particular configuration of attributes can, like a fingerprint, frequently identify its owner beyond reasonable doubt" (SRA, 2003:39). As such, any information about participants which may hint at or give away their identity has been, to the best of my ability, omitted from this thesis, as well as from the reports provided to the individual YOTs and the YJB.

Assuring the young people of the confidentiality of the interviews was essential to establish trust between us. The first young person to be interviewed asked, as we were going through the information sheet and consent form, if I was going to tell the YOT what he said in the interview. I assured him that I would do no such thing unless, as was stated in the information sheet, he disclosed any information which suggested that either he or another individual was at risk of harm, in which case I might have to tell his case manager. This caveat was also important to highlight to the young people, and they were encouraged not to disclose any incriminating information regarding past or planned offences. Often, I had to exercise careful judgement about whether I should breach confidentiality. One instance arose when, during the course of an interview, a young person received a phone call and informed me that he was going to have to go soon because he had to "do a deal" (meaning that he was going to sell drugs). He had just told me, in so many words, that he was intending to commit an offence.

I decided that I would not breach confidentiality for two reasons. First, I could not be certain that he was telling the truth – it may have been bravado, or he may have been testing the genuineness of my promise of confidentiality. Second, he had not provided any information about the location of this 'deal', so there was nothing anybody could have done about it anyway. A conversation with my supervisor reassured me that I had made the right decision: further reasons not to breach confidentiality included the potential to provoke feelings of betrayal in the young person and to reinforce distrust of adults or 'professionals', as well as the fact that the YOT workers were already aware of and addressing continuing substance misuse issues.

Fifth, and finally, it was important to recognise that any uncovering of poor practice, or of tensions between the adult participants, could have a harmful effect on them; for example, by tarnishing their individual, or the YOTs', reputation; and/or by jeopardising already strained relationships within the YOTs. As such, ensuring that individual practitioners' and managers' identities were concealed in the feedback reports

and, of course, in this thesis, was paramount. In one instance, this was impossible: in one of the YOTs, a single case manager was responsible for all Intensive Supervision and Support (ISS) interventions, and so it was impossible to conceal their identity in the feedback report to the YOT. However, I ensured that the information contained in the reports was impartial and factual. In some cases, as with the ISS case manager, I consulted the participants prior to including information about their practice in the report to ask them what they thought about the points I wanted to raise. By so doing, any observations / suggestions for improvement which were included in the report did not come as a surprise to those participants.

3.3.4 Privacy

The above discussion on minimising harm has already touched on a major element of privacy – that of anonymising participants' contributions. This, and the connected issue of securely storing all data, were paramount concerns in the research process, and all participants were informed of the measures which would be taken to protect their identities during the research period and the dissemination process. These included: anonymising the research sites (YOTs) as well as individual participants; ensuring that any information (including quotations) which might inadvertently disclose the identity of participants was either omitted or presented in a disaggregated form; keeping recordings of interviews on a password-protected audio recorder which was kept on my person or stored in a locked drawer at home at all times; and encrypting the computer uploads of the recordings and all files containing data (primary or secondary) collected from the YOTs. Further, no report, case file, or any other document containing personal details about the young people or the YOTs was ever taken off the research sites.

The other concern about respecting participants' privacy is linked to the principle of informed consent and relates to accessing the young people's case files. It has already been noted that the interview guides for the young people deliberately steered clear of topics relating to their private lives; however, such information was found in abundance within their case files. In line with the requirements of the *Data Protection Act 1998* (the relevant legislation at the time the fieldwork was planned and undertaken), permission was obtained from the YOT manager to access these files. However, the young people themselves and their parents were not consulted. Although this can be justified on the basis that the files did not belong to the service users but rather were the property of the YOTs,

the fact that the service users would not be given an opportunity to refuse what could be perceived as an invasion of their privacy troubled me.

The SRA gives the following advice in relation to using existing records for research purposes:

> "In cases where subjects are not approached for consent because a social researcher has been granted access, say, to administrative or medical records or other research material for a new or supplementary inquiry, the custodian's permission to use the records should not relieve the researcher from having to consider the likely reactions, sensitivities and interests of the subjects concerned. Where possible and appropriate, subjects could be approached afresh for consent to any new enquiry." (SRA, 2003:32).

Although case files are not compiled as "research material" – they have not been collated for the benefit of social researchers – the SRA's advice is still relevant. The pivotal sentence, in my view, is the final one: the researcher should consider approaching service users for their consent "*where possible and appropriate*" (*ibid.*, emphasis added).

After much contemplation and numerous conversations with my supervisors, I eventually settled on a pragmatic justification which satisfied my moral quandary: seeking consent from young people and their parents for access to their case files would likely have a negative impact on the ability of the study to proceed. Evans (2006), consistent with this view, argues that the difficulty of obtaining permission from the subjects of the case files would "probably have jeopardised [his] whole research venture" (p.115). Hayes and Devaney (2004), in an attack on what they perceive to be an over-regulation of access to social work case files, argue that "in seeking to protect the rights of vulnerable individuals, the lives of these same individuals may go unstudied with the consequence that they receive less appropriate services" (p.313). Despite being convinced that I was not behaving unethically by deliberately not seeking the consent of the young people to access their case files, I did, nevertheless, take extra care to ensure that I did not record any information which was not relevant to the study.

3.4.5 Deception

The ESRC's guidance states that research should generally be conducted "openly and without deception" (p.30). However, it recognises that "there are occasions when the use of

covert research methods is necessary and justifiable" (p.9). The BSC and SRA have similar stances: in essence, deception is not encouraged, but neither is it prohibited. With proper justification (e.g. necessity), some degree of deception or 'covert research' is accepted: "any departure from a consent approach should be fully justified and… submitted to the [research ethics committee] to be reviewed" (ESRC, 2015:30). The SRA (2003) further elaborates that deception is a normal part of social interaction, and that on this basis, it is unrealistic to totally eliminate deception from social enquiry. For Bryman (2016), not only is outlawing deception unrealistic, it is also "rarely feasible or desirable to provide participants with a totally complete account of what [one's] research is about" (p.134).

It could be argued that an element of deception featured in my initial proposal to and conversations with YOT managers when negotiating access. Although my intentions were made clear – to study breach practice within the YOTs – I deliberately placed more emphasis on the breach 'procedures' in place in the YOTs rather than the decision-making of YOT staff. By emphasising procedures, I believed that the YOTs would be more amenable to supporting the study. However, once I was in the field, and as my relationships with the staff developed, I increasingly talked to and questioned them about specific incidents of decision-making, explaining how this was important to my understanding of the implementation of breach procedures.

In my view, taking this approach was not untruthful or deceptive. My objectives were made clear to all participants from the beginning and these never changed; all that changed was the emphasis. As it happens, I ended up heavily relying on notes recorded in the young people's case files to trace practitioners' breach decision-making. I could not have shared this intention with the YOTs prior to entering the field as, frankly, I had no idea of the depth / breadth of information contained in the files until at least a few weeks into the data collection phase. Ignorance, therefore, as well as deliberate emphasis, played a part in shaping the research proposal and the information given to staff.

One important aspect (method) of the research process had, in my opinion, a covert element: the observation of staff in their daily environment (at the YOT offices). By situating myself on the YOTs' premises I could listen to conversations between staff and observe their interactions with each other and the various young people entering the premises. In this way, I learned a lot about the 'culture' (or lack thereof) within the YOTs; the sudden nature of many decisions relating to non-compliance; and the ways in which staff interpreted their official breach procedure. Perhaps most insightful of all, were the conversations I overheard between staff expressing their thoughts (and often frustrations) about the YOT, the young people, management, and many other related subjects. Although

all the staff knew who I was (a research student) and what I was doing (collecting data on non-compliance and breach for my thesis), they may not have been aware each time I was listening in. That said, I did sometimes ask questions which would have made it clear that I was listening / had heard.

The essence of my justification for not being upfront with the YOTs about my ongoing observations is captured in the following quotation by the BSC: "Covert research may be allowed where the ends might be thought to justify the means", acknowledging that "there are some circumstances where attempts to gain individual consent would be counterproductive" (p.6). Being able to listen in on 'office talk' and informal conversations helped my understanding of how breach decisions were made by different practitioners. They were nowhere near as 'clear cut' as some practitioners liked to portray in interview. If I had told the staff that I was eavesdropping and writing notes about their informal conversations, they might have lowered their voices; stopped talking once I entered a room; or worse still, avoided me altogether. It would have been much more difficult if not impossible to build a good rapport with them, as they would suspect that everything they said to me or in my presence was being noted and possibly judged (which was not true, of course). As well as being detrimental to my own research, this might well adversely affect the dynamics and atmosphere within the office, to the point that what I was observing no longer reflected the usual, day-to-day occurrences on the premises.

3.4 Preparation

During the first year of the study, while beginning to review the literature and discern my intellectual influences, I also attended research training modules provided by the University and completed relevant assignments. These modules focused primarily on research designs and aided my understanding of the purpose and practicalities of using specific research methods. The Coleg Cymraeg Cenedlaethol's research training courses were also attended and further developed my understanding of the nature of qualitative research. Further, I enrolled onto and attended an 'active listening' course and training sessions on safeguarding and motivational interviewing – all provided by my local YOT where I volunteered.

Before entering the field, I also reflected seriously on how my values, experiences, and theoretical and ideological stances might influence the research process and my interpretation of the data (see concept of 'reflexivity' in, for example, Berger, 2015; Hammersley and Atkinson, 2007). For example, although my understanding of 'children

first' and its application to 'breach' prior to entering the field was based on a careful analysis of policies and existing literature, I did not assume that my interpretation was the only possibility. Therefore, although I had a clear conception of 'children first' in mind (see working definition and discussion in Chapter 1, section 1.4), it was not assumed that this understanding would be shared by participants. Just because they might not share this view did not necessarily mean that their decisions were not motivated by a 'children first' concern for promoting the well-being of the child.

Heeding Wax's (1979) warning of the tendency of students to "expect to be able to subordinate those aspects of themselves [age, gender, temperament, ethnicity] to the exigencies of performing research" while, paradoxically, these factors are actually "magnified in the process of developing interactions with strangers" (p.509), I considered how factors such as my age, physical appearance, accent, ethnicity, gender and social class might affect the participants' perception of myself and the fieldwork relationships. For example, I anticipated that while my young age (23-24 years old at the time of the fieldwork) might be advantageous in building rapport with the young people, staff might perceive me to be too young to do a 'serious' piece of research. This fear was reinforced by an acute awareness of my lack of research experience and of knowledge about the day-to-day functioning of the YOTs. Consequently, I made a conscious and active effort to embrace the identity of a 'learner' and to act accordingly: I ensured that the participants realised that I wanted to learn from them – the 'experts'.

Linked to this was my concern for how best to navigate my role as a 'researcher': on the one hand, there was no escaping the fact that I was an 'outsider', but on the other hand, my deliberate and prolonged immersion in the working environment of the participants inevitably took me some way towards becoming an 'insider' (see e.g. Ocheing, 2010; Milligan, 2014; Berger, 2015). Indeed, at YOT B I was 'accepted' by the staff quite quickly, soon becoming privy to office 'gossip', personal stories / problems, accounts of rivalries within the YOT, and much more. While this acceptance was invaluable to the study in terms of the openness with which staff talked to me about their work, I frequently had to quietly withdraw from conversations or find an excuse to leave when the subject became too personal (e.g. when staff started 'bitching' about colleagues).

Common sense, combined with extensive experience of working with young people and a personal contempt for pretentiousness, provided the guidance I needed in relation to my accent and physical appearance (including the way I dressed): be genuine. Phoney attempts to adapt my accent or appearance according to the company I was with would be unsustainable, inviting accusations of insincerity and perhaps even discouraging

participation. That said, I did inadvertently start using a few turns of phrases particular to the areas in which I was based, but this was neither forced nor deliberate and as such invited no obvious attention or disapproval.

In relation to gender, retrospectively, I can see that prior to entering the field, I had not fully anticipated nor appreciated the potential impact that being female could have on fieldwork relations. Although I was aware of some of the difficulties female researchers have faced (e.g. not being taken seriously, judged for not conforming to stereotypes of 'femininity'), especially in situations when attempting to study male-dominated groups (see for example Gurney, 1985), I had not anticipated some other difficulties which did arise. For example, the young people with a breach history were all males, many of whom had been abandoned by their father and experienced neglect and/or perceived rejection by their mother, whom the young people had witnessed to have multiple – and often abusive – partners. Although one should be hesitant before making causal links, given this context, it was perhaps unsurprising that many of the young people had a very poor opinion of females – namely, that all girls and women are 'slags', or 'jezzies'. I had to assume therefore, that by virtue of being a woman, I too was regarded in the same way.

In some of the first group settings I attended, some young people would deliberately start talking crudely about women when I approached. I interpreted this as their way testing me (I had witnessed it several times before), and it stopped once they realised that I did not take any of it personally and was not discouraged by it. So although I believe it took a longer time for me to start to be 'accepted' by the young people due to my gender, I also believe that being female (and young) – which may be perceived as less intimidating – encouraged the flow of conversation during interviews. That said, I do not consider myself to be stereotypically 'feminine', and in my view my ability to engage with ease in conversations about topics traditionally associated with males (e.g. motorbikes, football, rugby) was certainly advantageous. These dynamics were not replicated in my interactions with the male professionals who were involved in the study; this may have been due to their professionalism, but also could have been influenced by the fact that they were not working in a male-dominated environment.

The other significant factor in terms of the young people's willingness to talk to me was where I lived, or where I was from. The impression given by some of the young people was that if I lived in one of the areas which they 'terrorised' (young people's term for 'antisocial behaviour'), they would not have talked to me. This reinforced to me the importance and benefits of doing fieldwork away from home.

Despite the different forms of preparation I undertook prior to entering the field, I was unprepared for the initial difficulties I faced in the field when interviewing staff. The courses and training sessions I attended were all geared towards engagement with children and young people; I had not anticipated that the difficulties I would face would manifest in my interactions with adults. Building rapport with and interviewing young people was relatively easy. This was perhaps unsurprising as I had spent the previous eight years working in some capacity with children and young people of various abilities and social background. Communicating and developing rapport with the young people therefore came naturally to me. Building a relationship with staff, especially in YOT A, initially proved to be more difficult. However, I overcame this by making a deliberate effort to learn about the broader work they did with the young people (not just focusing on breach); framing questions in terms of seeking their help to understand something, thus presenting myself as the learner and them as the expert; and also by showing genuine interest in their lives beyond their work.

3.5 Research Methods

This section discusses each of the research methods used in the data collection phase of this study. They are addressed in the following order: case file analysis; interviews; focus groups; and observations.

3.5.1 Reviews of case files

45 case files were reviewed in this study. Of these, 32 were "fully reviewed" (that is, analysed in order to achieve *both* purposes outlined in the paragraph below). Of the 32, 16 were the case files of young people with one or more BCJO offence on their record (8 from each YOT, all males); the other 16 were the case files of young people who had no BCJO offences (8 from each YOT, all males) (see how these case files were selected in section 3.2.2). The remaining 13 case files related to all the girls on criminal justice orders at the time the case files were selected (9 from YOT A, 4 from YOT B) and were only partially reviewed. This means that they were only analysed for the second purpose outlined below.

The purpose of analysing the case files was twofold: first, to trace the step-by-step decision-making of YOT workers (case managers, operations managers, and when relevant, the YOT manager) when responding to non-compliance by children on criminal justice orders, as well as the court outcomes for the young people who were breached. Of

particular interest were the justifications (or lack thereof) for the decisions, and whether the reasons recorded in the case notes were coherent with those stated in official documents such as breach reports and warning letters. The records of staff decision-making in the case files also provided a useful reference point for individual interviews, and enabled the answers given by staff during those interviews to be compared with the records in the case files. The second purpose of analysing case files was to gain a reasonably clear picture of the children's demographics. In the 32 case files which were fully reviewed, particular attention was paid to how these demographics related to their circumstances prior to, during, and following instances or episodes of non-compliance.

Both these aims proved difficult to achieve and required a copious amount of cross-referencing between different components of the case files, and conversations with YOT practitioners, volunteers, and managers. Analysing the case files was by far the most time-consuming and difficult element of the fieldwork, primarily due to the following reasons: the content of the documents / records within the case files; and the nature of those documents / records. These two issues are discussed in due course, but first, my reasons for choosing case files as a primary source of analysis are shared, followed by a brief overview of the format of the files.

Case files were chosen as an object of analysis because of the wealth of data contained in them – not only about the young people's involvement with the YOTs, but also about many other aspects of their lives which were likely to have affected their involvement in the YJS. They contained a raft of documents and other texts, including but not limited to:

- ASSET and/or AssetPlus assessment forms;
- Offence, court, accommodation, education, and YOT interventions records;
- Case notes;
- Supervision notes (between managers and practitioners and between practitioners and young people);
- Records of non-compliance and consequent decision-making;
- Justifications by young people for non-compliance and by practitioners and/or operations managers for breach decisions;
- Warning letters and appointment letters;
- Pre-sentence reports, 'progress' reports, and breach reports;
- Minutes from, and reports based on, Enhanced Case Management formulations and reviews;

- Minutes from multi-agency case planning meetings;
- Psychologists' reports;
- Records of safeguarding referrals;
- Referral Order contracts; and,
- 'Start of Order Contracts' (in YOT A).

Case files were a gold mine of information and were invaluable in assisting my understanding of breach decision-making. A further reason for choosing to study case files was the fact that they were 'live' – i.e. continually being updated (for as long as a young person was involved with the YOT). This meant that their progress with their orders could be traced at a later date (this was done six months after the case file samples were initially selected).

The case files were stored electronically in two locations. Most of the documents were stored in the YOTs' 'O drive', while the day-to-day progress of cases was recorded on the YOT's case management system (CMS), where the ASSET and/or AssetPlus forms were also found. Accessing the case files was a relatively straightforward matter, but the process of interrogating the files, connecting case notes / records of events with relevant documentation or other evidence, and making sense of the various texts, proved to be challenging. As previously stated, the difficulties were twofold. The first related to the content of the files; the second to the nature of the documents / records contained within the files. The following two subsections elaborate on these challenges.

3.5.1.1 Content of the case files

Despite the breadth of information contained in the files, considerable gaps were also often found. For example, the 'legal episodes' tab where staff were supposed to record any periods a child spent as 'looked after' was inconsistently used. Very little information could be gleaned from this tab on the case management system (CMS) so evidence had to be found elsewhere in the case file, such as in pre-sentence reports. Often, having had no luck finding information in the case file, I would ask the case manager directly.

Another example of such 'gaps' relates to staff's use of AssetPlus – a central part of the file which enables a much more comprehensive assessment of the child compared to its predecessor, Asset. YOTs were expected to use AssetPlus in their initial assessment of the child, and to update the relevant parts as and when the children's progress on their orders was reviewed. While the initial AssetPlus assessment was invariably the most

detailed (review assessments were often identical to the initial assessment), even then, certain parts of the forms were noticeably bare. Perhaps most frustratingly, was the frequency with which all or part of the child's 'self-assessment' questionnaire, and their parent / guardian's questionnaire, were left blank. While this might be partly explained by the relatively novel status of AssetPlus in both YOTs at the time (the system had only been operational for approximately 12 to 18 months, and I was told in both YOTs that it had taken a long time for staff to learn to navigate it), it may also be related to its time-consuming nature: staff reported that it took them more than two hours to complete the whole AssetPlus assessment. For some of the staff, it was a challenge to get the young people to sit down even for ten minutes.

The information on educational history / placements contained in the case files was also lacking. This was a constant thorn in the side of the case managers, most of whom frequently complained about the poor relationship the YOT had with schools (relationships with Alternative Education providers appeared to be better). One case manager in particular would often reminisce over the days where he knew exactly 'what was going on' in the schools and ensured that the schools upheld their statutory duties (by threatening to take them to court). The statutory inclusion of one or more representative of the education sector in the YOTs was, to this case manager, a 'failed experiment' which created a gatekeeping obstacle between the case managers and the schools and made the latter less accountable to the YOT.

While the lacunae in the information about education appeared to be largely due to a weak information-sharing system between education providers and the YOTs, the same explanation did not extend to the substantial variation in the amount and quality of information contained in different case files. One of the most valuable data sources in the study of breach decision-making was the case notes or 'contact records' made by case managers; however, the richness of these records varied from one case / intervention to the next, depending on who was supervising (managing) the case. Some case managers wrote essays while others wrote barely a sentence. This discovery was one of many which highlighted to me the importance of situating myself at the YOTs' premises to do the research: if any information was missing or unclear, I could simply ask the case manager or relevant worker to clarify / fill the gap. I was, however, mindful of the possibility of workers mis-remembering information, or indeed, just making it up.

Why, then, was there such significant variation in the quality of record-keeping? Some staff were what could be referred to as 'minimalist recorders'. In a minority of cases, the sparse records appeared to reflect case managers' attitude towards their work with the

young people in general. The following extracts from my research log captures my shock at the inadequacy and complacency with which one practitioner tended to one of his cases:

> I was looking at a case today to understand why a young person on a YRO is being breached. All I could find on his case notes in the weeks leading up to the breach hearing were five brief statements from different case managers stating "missed appointment" and either "[YP] refused to turn up" or "No explanation". No evidence of any attempt to chase these up or to get an explanation… two warning letters in file, no breach report yet… What happened?
>
> [About a week later]… Just spoke to [case manager] for [above young person]'s case. Asked him what was going on… he said that he didn't know, that he was on holiday, that the young person was supposed to see the duty case manager but he didn't turn up. I asked him if the young person knew that [the case manager] was going on holiday and that he would have to see the duty case manager for three weeks… he said that he "definitely mentioned it" to the YP. There's no evidence in file whatsoever… Asked [case manager] what made him decide to breach (I mean, come on, on what information was he basing this?!) and he said that YP is "obviously not engaging with us, is he?"

While this particular practitioner's poor record-keeping reflected his complacent attitude, by and large, this was unrepresentative of other practitioners. Garfinkel (1967, cited in Evans, 2016) invites us to consider other reasons why the information in case files is sometimes lacking. One common-sensical explanation he offers is that practitioners simply do not have the time to keep comprehensive records. Certainly, many practitioners seemed overwhelmed with work. Despite frequent references by most practitioners to the substantial reduction in the size of their statutory caseloads over recent years, there was a consensus that the cases they had now had to deal with were much more complex and required much more work, especially inter-agency planning. However, a more common complaint among practitioners in both YOTs was that they did not 'sign up' to be sitting in front of a computer when they agreed to take the job at the YOT: they were there to 'make a difference to the young people', and this, of course, required spending quality time with the young people. Ironically, though, those who complained most publicly and frequently about the recording requirements also tended to be those who had fewer contacts with their supervisees.

Another potential explanation for gaps in the records might be that by deliberately not recording their intentions or targets, practitioners were less likely to be confronted / detected if they failed to implement or achieve those targets:

> "… the act of writing something down usually commits someone to doing something… By the same token, not writing something down commits nobody to anything. It is surely quite likely that hard-pressed practitioners sometimes do not write things down precisely because it saves them work. Many will strive to honor the unwritten contract, but they will wish to avoid the embarrassment of failing to implement recorded action plans." (Evans, 2016:7).

Whatever the reasons for the information gaps in the case files, the research process was certainly prolonged as a result. This was further exacerbated by the inaccurate recording practices of many of the staff. For example, some case files had one or more breach of criminal justice order (BCJO) offence recorded in the offence history section, but no corroborating evidence (e.g. records of non-compliance, warning letters, breach reports) could be found anywhere in the file to illuminate the circumstances of these recorded BCJO offences. Eventually I worked out that staff were inaccurately recording orders which had been revoked *due to further offending* as breach offences. The frequency with which this mistake was made, which reflected a conceptual and legal misunderstanding among many staff of the terms 'breach' and 'revocation', was worrying on several counts – not least because of the potentially damaging implications for the young people concerned. From a selfish perspective, suffice to say these inaccurate recordings frustrated the process of sampling and analysing the case files, as well as the analysis of historical data from the case management systems which were obtained from the YOTs' Information Officers (see Chapter 4).

3.5.1.2 Nature of the documents / records

When contemplating the value of documents in the study of social phenomena, it is not only their content that matters. As Prior (2011) states: "Clearly, documents carry content… but the manner in which such material is actually called upon and manipulated, and the way in which it functions, cannot be determined (though it may be constrained) by an analysis of content… The text has meaning only in the context of its use and its nature is

defined by its use" (p.8). Questions needed to be asked, therefore, not only about the content of the documents (i.e. what is included and what is omitted), but also about the context of their construction and their intended use. For example: who wrote the document and who will read it? For what purpose? With what goal in mind? (see e.g. Hammersley and Atkinson, 2007; Prior, 2016).

The importance of understanding the context and purpose of documents is highlighted by Garfinkel's assertion that data within case files is often deliberately distorted (Garfinkel, 1967, cited in Evans, 2016). Garfinkel (*ibid.*) states that one way in which data may be distorted is when practitioners who have a particular outcome in mind retrospectively fill in the assessment to 'suit' the outcome. In this way, while it appears as if the outcome was a logical consequence of the assessment, in reality, the assessment played no part in informing the outcome.

Another example of distortion within case files is highlighted by Bryman's (2016) example of minutes for meetings. While they have the potential to illuminate the reader of an organisation's preoccupations and / or disputes between workers (for example), it is precisely because the document is constructed with the knowledge that it will be read by a wider audience than the participants (e.g. by managers, members of other organisations, inspectors, potential researchers, etc.) that the author may distort the data. Disagreements may be toned down or omitted altogether, and "actions to be taken may reflect a desire to demonstrate that important issues are to be addressed rather than because of a genuine desire for acting on them" (Bryman, 2016:560).

There were many examples of documents contained within the case files in this study whereby the information appeared to be distorted. One obvious example was the breach reports. Their purpose was twofold: to inform the magistrates of the instances and circumstances of a young person's non-compliance; and, more importantly, to make a recommendation to the magistrates as to the best course of action to take. It was quite clear that some practitioners who favoured less punitive outcomes often down-played the extent of non-compliance by the young person. This highlighted the importance of cross-referencing between other texts, documents, and conversations with practitioners. Relying on the breach reports alone for insight into the reality of non-compliance would have provided a false account.

Atkinson and Coffey (2011) further caution the analyser of documents to examine the way in which language, or vocabulary, is used to convey information. In minutes of meetings, the language may be 'cleaned' or 'mellowed', failing to fully capture the nature of the interactions between participants. In the breach reports, subtle differences, for

example between the use of "failed to comply" and "refused to comply", could convey two very different representations of the young person to the court.

To summarise, case files were not simply "mined for evidence" (Prior, 2016:172). Their use in informing the study was dependent on the contextualisation of the documents and texts contained within them, including their intended audience and outcomes. My understanding of the circumstances in which the documents and texts within the case files were written was aided by informal conversations and interviews with participants. It is to these we now turn.

3.5.2 Interviews

Despite the wealth of information contained in the case files, they revealed very little about the staff's views on breach. Although superficial justifications for their breach decisions were recorded in (most of) the case files, it was impossible to fully understand the rationale behind these decisions from case files alone. Did staff decide to / not to breach a young person because they thought it was in his/her best interest? Or because they were trying to follow *National Standards*, or the YOT's breach policy? Perhaps they were concerned for the safety of others and/or the YOT's perception by the courts and the wider public. Were they influenced by 'children first', and if so, how did they interpret it? These sorts of questions could only be answered by talking to the staff. Although a lot of insight was gained into staff's beliefs and attitudes through observations (see previous discussion in section 3.4.5, and also section 3.5.4), interviews provided the opportunity to talk at length with the staff, magistrates, and Referral Order Panel volunteers about how and why they made their decisions. Undertaking interviews with young people was equally – if not more – important, especially given that virtually no representation of the young people's views was found in the case files. Hearing directly from the young people was essential (see discussion on ethical considerations in section 3.3). Both YOT managers agreed that it was important to find out what the young people thought about the legitimacy of breach proceedings and their outcomes.

35 one-to-one interviews were conducted with 31 participants: 10 with young people (eight of whom had a breach history two who had none); five with Referral Order Panel (ROP) volunteers; one with a Youth Court magistrate; and 19 with 15 different YOT staff, including both YOT managers (heads of service), three operations managers, 9 case managers, and one case worker. Additionally, three magistrates were interviewed together in a spontaneous opportunity which arose immediately after a court session:

Operations Managers (n=3)	**Magistrates (n=4)**
OM 1, Pengaron (interviewed twice)	MAG 1, Pengaron (group interview)
OM 2, Pengaron	MAG 2, Pengaron (group interview)
OM 3, Llanfadog	MAG 3, Pengaron (group interview)
	MAG 4, Llanfadog
Heads of Services (n=2)	**Referral Order Panel volunteers (n=5)**
HoS, Pengaron	ROPV 1, Pengaron
HoS, Llanfadog	ROPV 2, Pengaron
	ROPV 3, Llanfadog
Case Managers (n=9)	ROPV 4, Llanfadog
CM 1, Pengaron (interviewed twice)	ROPV 5, Llanfadog
CM 2, Pengaron (interviewed twice)	**Young People (n=10) (pseudonyms)**
CM 3, Pengaron	YP 1, Pengaron: **Aaron**
CM 4, Pengaron	YP 2, Pengaron: **Blayne**
CM 5, Llanfadog (interviewed in two parts)	YP 3, Pengaron: **Chris**
CM 6, Llanfadog	YP 4, Pengaron: **Dafydd**
CM 7, Llanfadog	YP 5, Llanfadog: **Euan**
CM 8, Llanfadog	YP 6, Llanfadog: **Franklin**
CM 9, Llanfadog	YP 7, Llanfadog: **Gabriel**
	YP 8, Llanfadog: **Harry**
Case worker (n=1)	YP 9, Llanfadog: **Ianto**
CW 1, Llanfadog	YP 10, Llanfadog: **Jake**
Total 1:1 interviews = 35	
Total 1:1 interview participants = 31	
Total group interviews = 1 (3 participants)	
Total interview participants (including group interview) = 34	

Table 2. List of interview participants and code names (pseudonyms for young people).

Most of the interviews were audio recorded and transcribed. There were seven exceptions: two with ROP volunteers; the group interview with the three magistrates; and four of the interviews with the young people. The two ROP volunteers whose interviews were not recorded did not want to be recorded. I was unable to record the group interview with the magistrates because it was undertaken after the court's legal adviser spontaneously invited me into the court chambers after the conclusion of a court session which I had been observing. My recorder was not in my possession at the time (as I was not allowed to take anything other than a pen and paper into the court sessions), and the impatience with which the legal advisor ushered me through to the chambers and the fact that I did not know how much time I had to interview the magistrates discouraged me from excusing myself to get my recorder. Unfortunately, I was not quick-thinking enough to ask the magistrates at the end of the group interview if they would be willing to be interviewed individually. As for the four young people who refused to consent to the recording of their interviews, each of them stated that they did not want to be 'on the record'. In each of these seven cases, I made notes during the interviews and wrote up all that I recalled immediately after concluding the interviews.

All interviews were semi-structured, but the process of interviewing the young people was much less structured than that of interviewing the adults (YOT staff, ROP volunteers, and magistrates). The former could not, however, be described as unstructured, as they were based on a set of fairly specific questions. Semi-structured interviews were chosen over structured interviews because of the emphasis on finding out the views of the participants about different matters (see for example Creswell, 2009) and the flexibility of the approach. Although interview guides were developed prior to entering the field, the flexibility of the semi-structured interviewing approach allowed me to develop and refine these and pursue new lines of inquiry which emerged during the interviews. While I was fortunate to be able to return to some of the staff who were initially interviewed at a later date to ask further questions, the same opportunity was not afforded in relation to the young people. It was essential, therefore, to familiarise myself with each young person's case file prior to the interview so that I could tailor the guides accordingly. This included double-checking with the young people's case manager if I was unsure of some details, and asking them for advice on how best to engage with the young people (e.g. sit at a lower level than them to promote eye contact, provide gadgets for them to 'fidget' with, etc.). It must be said, however, that this was unnecessary in many cases as I had already started to get to know the young people while joining in their reparation or other group sessions.

Separate interview guides were developed for each category of participant prior to entering the field: young people, magistrates, YOT practitioners, YOT managers, and ROP volunteers. In my eagerness to start collecting data, I did not pilot any of the interview guides before using them for the first time. In retrospect, this was a mistake. The results were not disastrous, but when I listened back to the first handful of interviews and started transcribing them, I realised that I had failed to ask a number of key questions. This failure was not due to the content of the interview guide, but rather due to my lack of experience as an interviewer. I had attempted to conduct the interviews in a conversational style in order to build a better rapport with the participants and to encourage them to share their opinions openly (see e.g. Ryan and Dundon, 2008; Tizard and Hughes, 2002). However, the result of this in the initial interviews was that when the conversation was steered away from the topics by the participants, I struggled to re-focus the interview and ended up failing to ask many of the questions in the guide. If I had piloted the interview guides prior to entering the field, I could have identified and addressed these weaknesses at an earlier point.

However, in order to rectify these initial interviews, I re-interviewed the three YOT staff whose interviews were missing some of the important information on the first occasion I interviewed them. This allowed me to remedy this error and achieve consistency in the interview content. It also enabled me to collect additional data which gave greater depth to my understanding of individuals' cases.

All interviews were transcribed as soon as possible to benefit maximally from my own recollection of, for example, the body language and tone of voice of the participants. The importance of doing so in the case of the interviews which could not be recorded is self-evident, but there were also huge advantages to transcribing those which were recorded. In particular, having to write down everything that was said demanded very careful and attentive listening to the recording. Sometimes it was difficult to understand what was said, and only became clear after I re-played the recording multiple times. It is possible that such sections would have been missed entirely by only listening to the recording. A further benefit of transcribing the recording was that it made the process of identifying and grouping recurring themes much easier. Colour-coding the transcript gave a visual representation of themes which were related and / or new. However, when analysing the interview data, it was important to return to the audio recording rather than rely solely on the transcripts. This is because the audio reminded me of the pace and flow of the conversation, and of other features of the interview which could not be captured adequately in writing.

A few limitations of interview data must be acknowledged. First, it is recognised that the interview is not a static event whereby the respondent reveals an underlying reality, but rather a process which is active and dynamic and whereby meaning is co-constructed by both parties – the interviewer and interviewee (Bryman and Cassell, 2006). Holstein and Gubrium (1997) suggest that meaning is "not merely elicited by apt questioning, nor simply transported through respondent replies; it is actively and communicatively assembled in the interview encounter" (p.114). Leading questions were avoided at all costs to avoid encouraging the co-construction of a false 'reality'.

Second, participants' memories of the incidents, events, and decisions under scrutiny might not be reliable. They might mis-remember or have forgotten details. Alternatively, it is possible that they might make things up and be deliberately misleading. Interviews are, after all, 'performed' by both parties (Roulston, 2010). For the young people, in particular, incidents of breach and non-compliance might feel as if they happened a lifetime ago. Time is perceived differently at such a young age. Staff's recollections may likewise be skewed; they may remember things in a more positive light, for example. The advantage in the staff interviews was that we could refer to the young people's case files for records of specific events / decisions. Even so, they may wish to sweep certain events or decisions under the carpet if they anticipate they will expose poor practice or otherwise reflect badly on them.

Third, misunderstandings between the interviewer and interviewee may arise during the interview. To this end, I found it helpful to offer a summary of my interpretation of the participants' contribution to them and invite them to challenge or confirm that interpretation (see for example Kvale, 1996). But this, of course, would not eliminate all possibility of misinterpretations arising. Participants may be too timid to correct my interpretation, or perhaps unwilling to repeat themselves.

Finally, it should be noted that it is likely all the young people and YOT staff who participated in the study possessed more 'interview experiences' than me. Young people would have been subject to multiple interviews (at the police station, court, YOT, etc.), and the staff had years if not decades of experience in interviewing young people (e.g. for assessment purposes, PSRs, breach reports, etc.). It is certainly plausible that I failed to notice deliberate deflections by either party or any other 'tricks' which those who are well-acquainted with interviews may learn to use to achieve their own agenda. That said, by keeping to the interview guide, I ensured that every topic that I thought was relevant was covered, and could return to particular questions if I thought they had not been considered in enough depth.

To overcome these potential limitations, interview data were tested against information contained within the case files, and arising from observations, field notes and focus groups. As explained in section 3.1, a mixed methods approach was built into the study's design partly in recognition of the limitations of interviews such as those described above.

3.5.3 Focus groups

Focus groups were used with YOT staff for the following reasons: first, to capture as many views as possible on breach. Some of these views had already been elicited during one-to-one interviews; however, the focus groups provided an opportunity for more staff to participate and to share and question one another's opinions. Although I had already spoken at length with many of the YOT staff (not just those who were interviewed) about breach, the focus groups provided an opportunity for their views to be elucidated 'on the record'. Second, it would help to provide insight into the way in which staff collectively made sense of breach as a concept and as a process, and how they constructed meanings / formulated views around it. Third, I wanted to observe the dynamics between case managers (practitioners) and operations managers in a 'neutral' setting i.e. where everybody's role was that of a 'participant', not of 'a manager' or 'a practitioner'. Some case managers had previously voiced frustration at operations managers over-riding their breach decisions, so I was interested to see how they interacted together in this setting. One focus group was facilitated at each YOT.

In YOT A, the focus group was facilitated during a monthly case managers' meeting. This meant that the participants were largely self-selecting: anybody who turned up to the meeting could participate (they had been informed in advance by an operations manager that the focus group would be facilitated at the meeting, and consent was sought from each person in line with the ethical requirements). The number of participants, therefore, was largely outside my control. Ten people ended up taking part, a number which might be considered rather high. Morgan (1998), for example, proposes a range of 6 to 10, while Barbour (2007) advises no more than eight. Researchers tend to caution against larger focus groups because it makes the task of 'managing' them more difficult. Certainly, one case manager tried to dominate the discussion, and there were many instances where participants started to talk over each other, but these challenges were not insurmountable. Given the late stage of the research process at which the focus group was convened (see discussion below), I was much more confident in my role as a researcher

than I had previously been and had no qualms about prompting speakers to give way to other participants. That said, I had great difficulty enticing a more reticent member to contribute her views. In total, the group consisted of six case managers, one case worker (no breach decision-making responsibility), and three operations managers. Seven of the participants had not previously participated in an interview.

Table 3. Focus Group Participants with code names: YOT A

Operations Managers	**Previously interviewed?**
OM 2, Pengaron	Yes
OM 4, Pengaron	No
OM 5, Pengaron	No
Case Managers	
CM 3, Pengaron	Yes
CM 4, Pengaron	Yes
CM 10, Pengaron	No
CM 11, Pengaron	No
CM 12, Pengaron	No
CM 13, Pengaron	No
Case Workers	
CW 2, Pengaron	No

It was more difficult to arrange a focus group in YOT B. The YOT had, throughout the research process, experienced significant upheavals, not least in relation to several changes in management, and the loss of many experienced members of staff. Eventually, I secured the permission of one of the operations managers to facilitate a focus group immediately prior to delivering a presentation to the staff about some of the emerging findings from the research. As with YOT A, the participants here were self-selecting. Given the high staff turnover in YOT B, many of the case managers who had been individually interviewed had since left the YOT. Only six people took part in this focus group (two of whom had been previously interviewed). These included: two operations managers, two case managers, and two case workers.

Table 4. Focus Group Participants with code names: YOT B

Operations Managers	**Previously interviewed?**
OM3, Llanfadog	Yes
OM6, Llanfadog	No
Case Managers	
CM6, Llanfadog	Yes
CM14, Llanfadog	No
Case Workers	
CW3, Llanfadog	No
CW4, Llanfadog	No

The focus groups followed the same format in both YOTs. The participants were asked to read a vignette, which presented a hypothetical case of non-compliance which drew on common features found in YOT case files . They were then asked to share their views on it, guided by a handful of open-ended questions which I had prepared in advance. Using a vignette proved to be useful in terms of focusing the participants' attention (and mine) on the topic in hand. Some participants made notes on their copies of the vignette as they read through it. Having a specific 'case' (albeit a hypothetical one) to focus on enabled a much more detailed discussion of particular elements of the breach decision-making process than would have been the case if I asked them only to respond to general questions. By carefully constructing the vignette, I could also use it to gauge the participants' awareness / appraisal of the YOT's official breach policy without asking any direct questions. For example, I deliberately omitted any mention of a compliance panel in the vignette (although this was a compulsory part of the YOT A's breach policy) to see who / how many people would pick up on it and / or think it was important.

It was alluded to earlier that the focus groups were convened relatively late in the research stage. To be more specific, they were convened after a report summarizing some of the study's findings had been provided to both YOTs. As such, there was a risk that the views expressed by the participants would be influenced by their reading of the report and might not accurately reflect their beliefs. However, this concern did not materialise in either YOT. Aside from the fact that most of the participants had not read the report, their contributions in the focus group were largely consistent with what they had previously stated (either in interview or in informal conversations). But even if the views they expressed in the focus group had contradicted previous statements they had made, there could be any number of reasons why this was the case. It certainly would not have

invalidated the data. Rather, it would have opened up other avenues to explore, such as the impact of peer / managerial scrutiny on the expression of views by participants.

Facilitating the focus groups so late in the day did, in fact, prove advantageous. Given that I had been regularly returning to and communicating with the YOTs after finishing the initial phase of fieldwork, the participants were very familiar with me and comfortable in my presence.[53] Facilitating a focus group in the early phases of the fieldwork when we had not yet developed such a good rapport might not have yielded such a frank and open discussion. Another advantage of facilitating the group after getting to know the participants was that the shared jokes and whimsical comments were understood for what they were. It also meant that I could recognise a serious undertone to comments which were made 'jokingly'. For example, when one case manager in YOT A chuckled that "we've only got one in custody at the moment, no matter how hard I've tried", I might have assumed that it was a 'humorous' comment and put it down to banter. However, during previous conversations with this case manager, he had attributed the 'desistance' of two of his young people to their time spent in custody. He was open about his views on the 'positive' effects of custodial sentences. So although his tone of voice implied that this statement was not serious, my knowledge of his views and ways of working with young people said otherwise. A further advantage of the timing of the focus groups related to the confidence I had built as a 'researcher'. My lack of confidence during the initial phases of the fieldwork affected the quality of the interviews (as has already been discussed in the previous section), and I doubt that I would have been able to facilitate the groups as effectively at that stage.

Some of the general benefits of the focus group as a research method have already been mentioned, but a few specific advantages which it has over the traditional one-to-one interview are worth mentioning. For one, the focus group provides an opportunity for participants' views to be scrutinised, probed and challenged by each other. During the interviews, I was reluctant to challenge any inconsistencies, contradictions or blatant untruths which were revealed, for fear of making the interviewee feel uncomfortable and / or reluctant to share more information. In the focus group, this role of challenging views was taken up by the participants – with the result of opening up discussions (or arguments), rather than shutting them down. It is possible, therefore, that the focus groups revealed a more realistic account of what participants actually believed. Another advantage is that more control was relinquished to the participants in the focus group, so it was possible to

[53] With one exception in YOT A – one of the participants was a new member of staff whom I had not previously met.

observe which issues were emphasised by the participants and considered more important or significant.

These advantages, however, also provide the basis of some of the potential disadvantages of the method. For example, while group scrutiny and challenges of views might reveal a more realistic account of the views of participants (e.g. less idealistic), it might equally provide a skewed account, with less confident characters with different views surrendering to the majority view in order to avoid having to defend their views. Similarly, relinquishing control to the participants has its pitfalls: not least the dangers of going 'off topic' and / or domination of the discussion by a minority.

One difficulty I failed to overcome was the determined silence of one practitioner in YOT A with whom I wasn't familiar. Despite making attempts to bring her in to the discussion, she only uttered a couple of words in response. On reflection, she may have been unfamiliar with the concept of breach (she was a new member of staff), and indeed with my study, and might have been uncertain of why she was there. Notwithstanding the fact that everybody was asked to and signed a consent form prior to the commencement of the discussion, I should have made more of an effort to quietly introduce myself to her before the meeting started. This was the difficulty with not knowing in advance who was going to be present. It left little time to identify newcomers and come up with strategies to make them feel comfortable.

The focus groups, as with most of the interviews, were recorded and transcribed as soon as possible after the event. The recording was essential to keep track of who spoke, what they said, and how they said it. Bryman (2016) warns of the difficulties of transcribing focus group discussions. It has already been acknowledged that the size of the focus group in YOT A tended towards the 'large' category, but given my familiarity with 9 of the 10 participants, I had no difficulty identifying their voices. However, in both focus groups, some accents, and the rapid pace at which some staff spoke, made it more difficult to discern some of what was said. There were also some occasions whereby the participants talked over each other which sometimes made it impossible to catch every contribution, but these instances tended to last only a couple of seconds. Overall, these short bursts of talking over each other did not detract from the quality of the data – in fact, they often enriched the data as it was usually in moments of fervent disagreement that this occurred.

Focus groups with young people would have been greatly valued, but it became evident early on in YOT A that this would be impossible to arrange. Those who had a breach history were predominantly persistent in their offending and were minimally

engaged with the YOT. The difficulties experienced trying to arrange interviews with the young people would have been compounded in any effort to get a group of them to turn up together. Safeguarding considerations also deterred me from attempting to arrange a focus group: some of the young people had 'beef' (disputes) with each other, with conflict often emerging unpredictably.

The potential for facilitating a focus group in YOT B was greater because many of the young people had to turn up to a group session once every week as part of their court orders. However, two main factors prevented / deterred me from attempting to arrange this. The first related to the age range in the sessions: 12 to 18 years old. Aside from the fact that nobody under the age of 16 years had a breach history, the difficulties obtaining consent for under 16s (i.e. parental consent) were almost insurmountable (see ethics discussion in section 3.4). The stringency with which the leader of the group sessions delivered the sessions meant that if consent was not obtained for one of the young people, none could take part (the leader was not willing to split the group by, for example, taking those without consent to do a different activity). The second factor which deterred me from arranging a focus group in YOT B related to the group leader's personality. He had a prying nature and liked to gossip about other staff, and had insisted on being in the room if a focus group were to take place. This was despite explaining to him that this would breach confidentiality. I concluded, therefore, that his presence made the setting inappropriate for convening a focus group.

3.5.4 Observations

Three types of observations were undertaken at the research sites. The first type – the observations I made while 'getting on with' collecting data from the YOTs' case management system – have already been discussed under the ethical considerations section in this chapter, so they are only briefly revisited here. The second type included observations of various meetings and panels convened in the YOTs, as well as numerous court hearings; the third involved observing group sessions with young people. In all three cases, the purpose was to see how things actually worked *in practice*, rather than solely relying on participants' interpretations / constructions.

Undertaking observations in the YOTs' offices proved invaluable. First, and not to be underestimated, was the exposure to office 'gossip'. Such gossip included stories about supervision sessions with young people and with operations managers; opinions on the methods employed by different workers to engage young people; articulations of staff

members' concerns about managerial decision-making; and accounts of disagreements with other workers and / or agencies. Second, I could eavesdrop on phone conversations between staff and young people and witness the moment practitioners made breach-related decisions (e.g. informing a young person who had not turned up to a supervision session that they would be receiving a formal warning letter). Third, I was able to witness how young people were received when they turned up to the YOTs for their appointments. For example, were they searched? For how long were they made to wait before the case manager appeared? How did the reception and other staff talk to the young people? A further advantage of this kind of observation was that I was able to identify differences in cultural and interpersonal dynamics between different 'sub-teams' within the YOTs, and observe how these tensions affected information sharing and general case planning.

All these insights were invaluable and would have been hard to come by any other way. The information I obtained from observing the staff in their work environment was often more candid than that obtained during interviews. The 'case talk' which was observed proved to be just as illuminating, if not more so, as the notes in the case files (see e.g. Pithouse, 1987). It must be reiterated, however, that this better reflects the period spent in YOT B. For reasons already discussed, observation data from the offices of YOT A were far less rich.

The second type of observations were of various meetings, panels, and court hearings. The table below lists the different settings and number of observations.

Table 5. Non-participant observations: settings and frequency

Observation Setting	**Number of observations undertaken**	
	YOT A	**YOT B**
Referral Order Panels (also known as Youth Offender Panels)	7	4
Court hearings (breach offences)	2	3
Court hearings (sentencing for other offences – no breach)	2	3
YOT multi-agency 'case planning' meetings (also known as 'high risk' panels)	2	6
Compliance Panels	1	0
Enhanced Case Management formulations	0	2

These observations could be described as 'non-participant'. I had explained to the YOT managers and the facilitators of the meetings that observing them in action would help to provide a fuller picture of the breach process – including how and when key decisions are made. Thus, they were clear about my objectives. In these settings, my participation was minimal or non-existent – limited to the introductions at the beginning of meetings / panels. In court, following my introduction to the legal advisor in the first observation, I did not participate at all: I entered the court as part of the YOTs' court team. It is not assumed, however, that just because I did not actively participate in these meetings, my presence had no impact on them. As with the interviews, these panels, meetings, and court hearings were 'performed'. It is entirely possible (and likely) that the discussions in the panels and meetings were tempered because of my presence.

The third type of observation required much more participation on my behalf. These were observations of group sessions (reparation activities and sessions at an Attendance Centre). Again, the objectives of these observations were explained to and agreed by the respective YOT managers, and my role and reasons for being there were explained to the facilitators (YOT workers) and participants (young people) in the sessions. Initially, my objectives were to observe the types of tasks and activities young people are required to do as part of their statutory orders, as well as the young people's attitudes towards these activities. I had intended to stay on the periphery, observing the sessions in their 'natural' state from afar (i.e. without interfering). After the first session, however, it became clear that this was not feasible, nor necessarily desirable. The whole spirit of the reparation sessions was one of 'joining in'; the staff would not only teach the young people how to undertake the tasks (e.g. painting), they would also join in. More than that, the young people actually seemed to enjoy themselves. I soon realised that attending these sessions and building a rapport with the young people would be my best chance of hearing from the young people and hopefully recruiting some of them for interviews. But, of course, the best way of building rapport – as evidenced by the staff – was to join in. It became clear that the benefits of developing a good rapport with these otherwise 'hard-to-reach' young people far outweighed those of observing the sessions from a distance, especially given that my (and the YOT staff's) efforts to recruit young people for interviews had so far been futile.

Although my primary objective for attending these sessions changed from observation to building rapport, this did not in any way prevent me from continuing to make observations. Just because I was now an active participant in the sessions did not mean that the sessions had undergone a tectonic shift. In fact, to think that my participation

had any kind of significant impact on the essence of the sessions or the types of activities chosen would be delusional. A case in point: concerned that the young people might be adjusting their behaviour as a consequence of my presence, I asked two of the workers if they had noticed any change in the young people's behaviour since I had been attending the sessions. I was met with a look of bewilderment, followed by laughter, then a comment along the lines of: "You think they give a shit who turns up to these sessions, H?!" This view turned out to be spot on: as far as the young people were concerned, I was "from the YOT" (I had told them a few times that I was from a university, but the distinction did not really sink in until we started discussing the potential of participating in an interview). People "from the YOT" turned up to the sessions at various times, so they were used to it. As such, I was confident that my observations of the sessions in which I participated were representative of how the sessions proceeded in general.

3.6 Data Analysis

Analysis of the data had three main foci. The first was to examine potential similarities and differences in the socio-demographics, personal factors, and youth justice histories of young people who had breached one or more criminal justice order, and those who had not. The (minimal) existing literature had suggested that children who breached are more likely to experience more adversities and disadvantages at a greater intensity than those who do not.[54] The purpose of this analysis, therefore, was not to attribute or infer a causal link between the existence of these factors and the likelihood of breach, but rather, to confirm or challenge the existing evidence on the prevalence of these factors. The factors which were identified in the existing literature on breach in the YJS were used to develop a 'checklist' prior to entering YOT A; however, as the case files of young people were read, this checklist expanded to include other factors which emerged as potentially relevant.

Two between-group analyses were initially undertaken (those with a breach history and those without). The first analysis was of the entire statutory caseloads of both YOTs (i.e. all the children who were currently on criminal justice orders), where n=106. They were analysed for gender, age, ethnicity, and 'looked-after' status. The same analysis was undertaken for a second cohort: 32 selected case files where the proportion of those with a

[54] Note that these studies (Hart, 2011a and 2011b, and Grandi and Adler, 2016) do not differentiate between those who fail to comply but are not breached, and those who fail to comply and are breached. In this investigation, the initial analysis did not differentiate along these lines either; however, further analysis (see Chapter 4) highlighted the fact that not having a 'breach history' did not mean that there was no history of 'non-compliance' – and that YOT decision-making was a significant factor, in addition to the instances of non-compliance', in determining whether a child ended up 'breaching' an order.

breach history compared to those without was 16:16 (see section 3.2.2 for how case files were selected). Analysis of the other factors in the checklist – broader socio-demographics and factors relating to their involvement in the YJS – was initially limited to this second cohort. Later, after noting a recurring theme among practitioners relating to a perception of greater 'welfare needs' among girls compared to boys (none of those who had breached in the statutory caseload were girls), the case files of the girls on criminal justice orders at the time the cross-sections were taken (n=13) were also analysed for the prevalence of these factors (see elaboration in Chapter 4).

The second focus of analysis was to identify the various influences which the participants had identified as affecting children's compliance (including the children's own views), and influences which the adult participants identified as impacting on their breach decisions. The data which were analysed included interview and focus group transcripts and field notes – which included records from 'naturally-occurring' informal conversations as well as discussions in formal meetings. The difficulties of representing the 'reality' of interviews and focus groups on paper have already been discussed, so suffice to say that analysis of transcripts was always aided by recourse to the audio recordings.

The analytical approach applied to these data for this purpose was 'thematic' (Bryman, 2016). While it was also influenced by some principles and techniques traditionally associated with grounded theory (especially in relation to coding – see next paragraph), grounded theory was not used as a systematic method (see Glaser and Strauss, 1967; Glaser, 1978 and 1992; Strauss, 1987; Strauss and Corbin, 1990). In fact, some central assumptions of grounded theory as originally conceived (Glaser and Strauss, 1967) are rejected, especially the assumption that prior knowledge impedes the construction of new theories, which by implication discourages the researcher from immersing oneself in existing literature prior to entering the field.[55] As has already been mentioned, data collection and analysis in this study were undertaken after a thorough review of the literature, and therefore awareness of the dominant discourses in youth justice, 'children first', and compliance/breach was developed before analysis was undertaken (see Chapters 1 and 2). The sampling strategy of this study was not theoretically driven, and the concept of 'theoretical saturation' was not employed; both are key to grounded theory. Further, the aim of analysis was not to construct a new abstract theory but rather to create thematic analyses. It is quite clear, therefore, that grounded theory provided neither the dominant intellectual framework nor the tools for the research process.

[55] It ought to be acknowledged that 'grounded theory' has several variants, and that one contemporary version – "constructivist grounded theory" – also rejects this assumption (see for example, Bryant and Charmaz, 2007; Charmaz, 2016).

So how were thematic analyses undertaken? Initially, documents were read in full (with reference to the audio, where relevant). This enabled me to become acquainted with the 'full picture' and, in relation to the interviews, to identify which passages of the interviews would be analysed and which were less relevant or irrelevant. This was by no means a straightforward process, and information which I had initially thought to be irrelevant became relevant at a later stage. Upon re-reading the documents, data were coded. The way in which data were coded was influenced by grounded theory: they were labelled, categorized, and analysed soon after their collection, rather than postponed until the data collection phase had ended, a process which enabled emerging themes to inform the direction of new fieldwork (see e.g. Charmaz and Bryant, 2016). As more documents were read, the number of categories and key words initially increased. For example, one such category was 'reasons stated in interview for initiating formal breach proceedings'. Within this category, key words such as 'risk to self', 'risk of reoffending', 'risk to community', 'public perception of YOT', 'court perception of YOT', 'colleague perception of worker', 'manager perception of worker', 'national standards', 'breach policy', 'terms of contract', 'getting away with things', 'doing him a favour' were included. These (and many others) were then separated into themes, for example 'risk, 'perception by others', 'rules', 'personal beliefs', 'safeguarding', 'responsibility', 'accountability'. The themes were in a state of fluidity and revision as the research progressed, and gradually became more refined (as evidenced in Chapters 5 and 6).

The third focus of analysis was to present a reasonably accurate, contextualised narrative of specific instances of non-compliance recorded in the children's case files, and of the ensuing decisions by YOTs and (where relevant) magistrates. The purpose of this was to establish to what extent the themes identified in practitioners' and children's accounts of breach practice and non-compliance were reflected in actual events, and whether any other themes emerged which had not been identified by the participants. The primary data source for this analysis were the case files; however, relevant interview data and notes from the research log following informal conversations (i.e. those which talked about the specific cases) were also included.

The difficulties with attempting to construct factual accounts of historical events should not be understated (Potter and Wetherell, 1994). It was mentioned earlier that there were often many 'gaps' and/or unclear records in the case file information. While I did my best to 'fill' these gaps by talking to the YOT practitioners and (during interview) the young people, the information provided was only as accurate as the recollections and interpretations of the participants. Moreover, it could not be assumed that the

documentation of decision-making contained within the files was accurate (see previous discussion on 'good reasons for keeping bad records'). Data, therefore, had to be read in context (Gill, 2000), taking into consideration the underlying purposes of the information. Further, my own interpretation and construction of events was inevitably based on decisions about what was 'relevant'. It is entirely possible that I failed to include pertinent information which I did not recognise as such. To minimize the likelihood of such oversights, however, I communicated regularly with my supervisors to discuss cases, events, and emerging themes.

An overarching consideration while analysing all qualitative data was the importance of the context in which the information was produced and / or written down. For example, a practitioner who in their interview stated emphatically that young people "need to be punished if they don't comply with the order" did not once advocate 'punishment' in a breach report. To the contrary; this practitioner reported very positively on the young people in the breach reports, depicting the instances of non-compliance as minor 'blips' which, with a few strict words from the magistrates, could be easily addressed. It was also important to be aware of the intended meaning of words by different people. For example, many practitioners talked about young people needing to "take responsibility for not turning up", but what they meant by 'taking responsibility' differed according to the practitioners. While for some, 'taking responsibility' was a synonym for instigating breach proceedings, for others, it was a way of saying that the young people needed to explain to the YOT why they could not or did not attend a session.

Throughout the data collection phase, thematic analysis was undertaken on Word documents and Excel spreadsheets. The transcripts and observation notes were stored on Word, and the text was highlighted and key words typed in the 'comments' boxes. These key words were subsequently placed under broad categories in Excel (e.g. 'factors promoting compliance', 'stated reasons for non-compliance'), which were subsequently discerned into themes. Each time a key word was placed into a category it was referenced with the code name of the contributing participant; this way, I was able to keep track of who, and how many participants, mentioned particular themes. While this enabled me to identify prominent themes, there was a risk that I might be ignoring disconfirming data, seeing what I 'wanted' to see. On the advice of my supervisors, I undertook a second round of thematic analysis of the data – this time with the assistance of the data analysis software, NVivo 12.

This proved to be beneficial, not least because all the documents and audio files could be kept together in one place – making the process of referring back and forth

between the analysis and original sources much less time-consuming. The basic process of coding was similar to that done on Word and Excel – establishing 'nodes' (or themes) and highlighting parts of the text which were then 'moved into' the 'nodes'. However, there were added benefits such as the ability to create 'relationships' between different 'cases' (participants). This enabled me to relate the young people's case file narratives to the interview transcripts of their case manager (where an interview had been undertaken with the case manager). Moreover, the 'coding stripes' function provided a useful visual representation of the frequency with which particular themes were mentioned, and, more importantly, who mentioned them. Although no new 'themes' were identified during this second round of analysis, I was able to identify that I had over-stated the prevalence of 'punishment' as a theme among YOT staff for breach decision-making, because despite being frequently mentioned, the majority of phrases came from the same two interview transcripts.

Using NVivo also enabled me to see overlaps and tensions between different themes and categories which I had not previously noticed. For example, while 'opportunities in the YJS' had previously been identified as a theme relating to factors promoting children's compliance with their orders, I also identified passages which suggested that these 'opportunities' (i.e. prison) were cited as a reason for deliberate non-compliance (see Chapter 5).

Despite the benefits of using NVivo, the fact remains that what was produced was entirely dependent on how I read the documents – what I noticed, failed to notice, and, in constructing the narratives, what I thought was (ir)relevant. It is almost inevitable that some avenues of exploration have been missed, and alternative readings of data obstructed by my assumptions and prejudices. This is arguably the main limitation of undertaking the research and analysis alone, rather than as part of a team. This challenge to qualitative researchers does not, however, invalidate the data / analyses / findings. If this were the case, it would be impossible for any qualitative research, no matter how seasoned the researcher, to claim any validity. What is important is that I was aware of these challenges and did my utmost to mitigate against them. Frequent communication and discussions with my highly experienced supervisors – as well as discussions with other staff, students, and audience members at various events where I presented my research as it progressed – proved very advantageous in mitigating against personal bias. This enabled my analyses to be challenged and for different perspectives to be offered and had the general effect of opening my mind to other possibilities / interpretations. At times, it led me to revisit or re-analyse data to test some of their suggestions.

3.7 Conclusion

This chapter has aimed to present a clear and honest account of the research process – both in relation to how it was conceived and planned, and how it ensued. With the advantage of hindsight, the questions that need considering are: what were the limitations of this process, and what would I do differently, given the opportunity to start again? Five things come to mind.

First, I would have sought a definition of the Youth Justice Board's category of 'statutory orders' before undertaking an analysis of the statistics. The sampling strategy which I employed to select the case studies (YOTs) was, in my opinion, reasonable and justifiable; however, it was invalidated by my ignorance of the breadth of interventions included in the category of 'statutory order'. I would attribute this oversight to my inexperience as a researcher at the time. However, it taught me an invaluable lesson: never assume that recorded data are accurate. This informed my approach to examining the case files of the young people, which, as previously discussed, were rife with data recording inaccuracies. Ironically, then, the experience improved the accuracy and reliability of the field data which were analysed in this study.

Second, I would have arranged a pilot study in a YOT. This would have enabled me to become familiar with the processes, procedures, and interventions prior to entering the YOTs selected as case studies. It was mentioned earlier that much of my time at YOT A was spent trying to identify relevant processes, panels, meetings, and opportunities to meet young people; as well as learning how to navigate the case management system. This was probably to the detriment of building relationships with the staff in YOT A. That said, it was sheer luck that both YOTs in this study used the same case management system; a pilot study might not have alleviated this difficulty. Another benefit to undertaking a pilot study would have been to test and develop my interviewing skills and guides before using them with the research participants. I believe that this would have resulted in higher quality interviews with the participants from the beginning, thus avoiding the need to re-interview staff.

Third, while I did not expect the task of seeking and recruiting young people to participate in the study to be easy, I had not anticipated the extent of this difficulty. Although I eventually managed to interview 10 young people, this number was only achieved because of the generosity of the YOT managers in allowing me to return to the YOTs several times after the initial 3-4 month periods were over, and because of the

change to my research ethics statement on parental consent. This amendment came relatively late in the data collection phase following conversations with my supervisors; given the opportunity to do the research again, I would have sought their advice on the problem much sooner.

Fourth, I would have undertaken a full, in-depth review of the case files of the girls. While their files were interrogated for evidence of 'greater welfare needs' (using the same 'checklist' used for the selected cohort of those who had a breach history and the control group), a limitation of this study is that no narratives of breach decisions in their case files were constructed, and therefore no analysis undertaken. As such, the study can offer only very limited and tentative evidence on whether the suggestions made by some staff about treating girls differently due to perceived greater welfare needs bore out in practice.

Fifth, and finally, I would have better prepared a strategy for seeking the participation of magistrates in the study. A significant limitation of this study into the breach practice of YOTs *and* their associated Youth Courts is the very small number of magistrates (n=4) who were interviewed. Moreover, the spontaneous circumstances of the group interview with the first three magistrates meant that I was unable to record the discussion. Important information, therefore, may be missing. Given this limitation, magistrates' views included in this study cannot be said to be representative of those held by Youth Court magistrates. Nonetheless, observations made in court, discussions with YOT staff, and reviews of children's case files provided useful information on the way in which court proceedings functioned, and the types of decisions that were made. This study does, therefore, offer useful insight into the context, rationale, fairness, and impact of breach decisions made in court.

Despite these limitations / weaknesses, the discussion in this chapter has hopefully demonstrated that the quality and analyses of the data which inform the findings and conclusions of this dissertation are robust and provide a solid foundation for informing further research.

Chapter 4: The prevalence of breach, and the demographics of children on criminal justice orders.

4.0 Introduction

Although the primary purpose of this investigation was to undertake a qualitative analysis of breach decision-making, quantifiable data were also systematically collected to address two specific weaknesses in the existing 'knowledge' on breach. This chapter, therefore, has two purposes.

The first is to identify and start to address the significant limitations of the information available about the *prevalence* of 'breach of criminal justice order' (BCJO) offences in the Youth Justice System. The previous chapter alluded to the gradual uncovering in this study of the manifold problems with the official statistics on breach; here, these problems are exposed. In an attempt to start rectifying these limitations, several analyses of data derived from the case management systems (CMS) of both YOTs are presented. These give a far more accurate representation of the prevalence of BCJO offences, as well as the *types* of criminal justice orders which were most/ least commonly breached.

The second purpose of this chapter is to share an initial analysis of the socio-demographics, personal factors, and youth justice histories ("demographics") of the children on criminal justice orders in both YOTs. Those with at least one breach of criminal justice order (BCJO) offence on their record are compared to those with none. This was inspired by Grandi and Adler's (2016) study in which the case files of children on community sentences were systematically reviewed to identify criminogenic and socio-demographic factors associated with those who had breached compared to those who had not. In so doing, this chapter contributes to the scant literature on the various factors which tend to be associated with breach in the YJS.

The chapter is organised as follows. Section 4.1 analyses official statistics by the Ministry of Justice (MoJ) and Youth Justice Board (YJB) on the 'breach of statutory order' (BSO) offence. Multiple limitations relating to the accuracy, sufficiency, and reliability of the statistics are identified. The section contends that the limitations are so extreme as to make it impossible to glean any meaningful information from them about the prevalence of breach of criminal justice orders in the YJS.

The rest of the chapter explores the data collected directly from the YOTs' case management systems (CMS). Section 4.2 provides an overview of the YOTs' respective

breach rates; that is, the proportion of young people on criminal justice orders who had at least one breach of criminal justice order (BCJO) offence on their record. Related to this is a breakdown of the types of criminal justice orders breached in each YOT, and the frequency with which they were breached.

Section 4.3 compares the socio-demographics, personal factors, and youth justice histories of young people who had one or more BCJO offence recorded on their case files with those who had none.

Given that all the young people who had a breach history were male, section 4.4 provides an analysis of the demographics of girls on criminal justice orders to identify the differences between / similarities shared with the boys.

Section 4.5 concludes the chapter with a summary of the main similarities and differences between the different cohorts of young people and suggests that there is convincing evidence that those who breached their orders had generally experienced a greater number and combination of disadvantages and adverse experiences than their counterparts who had no BCJO offences on their records. This corroborates the (limited) evidence from other studies of breach in the YJS.

4.1 The official statistics

Every year, the Ministry of Justice and Youth Justice Board (YJB) publish official statistics on youth justice in England and Wales. They form the basis of the YJB's analysis of local, regional, and jurisdictional trends over time. Some of the main foci of the YJB's analysis are: the prevalence and types of proven offences;[56] the number of 'first-time entrants' (FTEs) into the YJS; the proportion of different types of disposals issued to children (pre-court, first-tier, community sentences, and custodial sentences); and reoffending rates.

At the beginning of this study, it was expected that these statistics could be analysed to provide some indication of the prevalence of breach of criminal justice order (BCJO) offences; the rate at which criminal justice orders were breached; and the number of young people who were in custody for breaching a criminal justice order. However, no such analysis was possible. This is because of the severe limitations of the statistics, concerning their accuracy, sufficiency, and reliability. These limitations are discussed in the following paragraphs.

[56] A 'proven offence' is defined by the Ministry of Justice and YJB as any offence "which results in a caution or conviction" (MoJ and YJB, 2017a).

The first major limitation of the statistics relates to what constitutes a "statutory order" for the purpose of recording "breach of statutory order" (BSO) offences. The YJB's offence category of BSO does not differentiate between criminal justice orders and civil disposals (e.g. Antisocial Behaviour Injunctions, Criminal Behaviour Orders, gang injunctions, etc.). Several requests were made to the YJB for disaggregated data, but to no avail. A response to a Freedom of Information request stated that the YJB does not collect disaggregated data from YOTs (see Appendix 4 for YJB's response to FOI request). They did, however, provide a comprehensive list of offences which may be represented in the statistics under the catch-all category of 'breach of statutory order'. These are listed in the table below (copied directly from the YJB's response – see also Appendix 5):

Table 6. Offence types mapped to 'breach of statutory offence' category

Offence types mapped to the 'breach of statutory order' offence category
Breach a criminal behaviour order
Individual fail to comply with a community protection notice
Breach of an anti-social behaviour injunction
Failed to comply with an anti-social behaviour injunction supervision order
Breach of a parenting order
Breach of Reparation Order
Recall to prison after release on licence which is revoked
Recall to prison after early release on licence - condition breached
Fail to comply with requirements of post release supervision for young offender
Remain unlawfully at large after recall to prison - Criminal Justice Act 2003
Failing to comply with the community requirements of a suspended sentence order
Commission of a further offence during the operational period of a suspended sentence order
Fail to comply with the requirements of a community order
Failed to comply with the requirements of post-custodial supervision
Breach of a supervision default order
Failing to comply with the requirements of a youth rehabilitation order
Failing to comply with the requirements of a youth rehabilitation order with fostering
Failing to comply with the requirements of a youth rehabilitation order with intensive supervision and surveillance
Breach of european supervision measures
Fail to comply with conditions when released on licence after return
Return to UK in contravention of temporary exclusion order
Person subject to temporary exclusion order fail to comply with permitted obligation after return to the UK
Breach of bail conditions whilst awaiting extradition
Breach a Female Genital Mutilation protection order
Fail to comply with court order for Bind Over
Breach of a domestic violence protection order
Failure to comply with Court Order
Breach of a referral order
Reference to court by Youth Offender Panel - Fail to attend meeting

Reference by Youth Offender Panel - Fail to reach agreement or sign record
Reference by Youth Offender Panel - Breach of contract
Reference by Youth Offender Panel - Fail to sign agreement record
Fail to comply with Attendance Centre Order
Fail to comply with Reparation Order
Fail to attend a youth offender panel meeting (parent)
Commission of Further offence whilst subject to a suspended sentence
Commission of Further Offence Before Serving Sentence in Full
Fail to comply with Drug Abstinence Order
Fail to comply with Pre-Sentence Drug Testing Order
Fail to comply the supervision requirements of a detention and training order
Offence during currency of Detention and Training Order
Breach of Gang injunction
Failed to comply with gang injunction supervision order
Breach of Statutory Order (Other) - Other
Breach of a Civil Injunction
Failing to comply with the requirements of an engagement and support order

Before commenting on this list it is worth noting that, although several data sources (from various agencies within the YJS) feed into the National Statistics, 'proven offences', including this list of breach offences, are based solely on data submissions the YJB receive from YOTs through their operational case management system – the Youth Justice Application Framework, or YJAF.[57] The YJB correspondent who provided this list confirmed that YOTs' records of offences are sometimes vague or inaccurate. This explains, for example, the inclusion of 'breach of Attendance Centre Order' in the list – an order that was abolished for children with the introduction of the *Criminal Justice and Immigration Act 2008* and replaced by an 'Attendance Centre Requirement' which can be attached to a Youth Rehabilitation Order. While this demonstrates that some YOTs need to update their case management systems to remove any out-dated sentences and offence types, this should not affect the accuracy of the statistics as such offences would still be recorded on YJAF as a breach of statutory order offence.

What is problematic, however, is the inclusion of several breach offences in respect of sentences which are only available for those aged 18 or over. For example, while children can be made subject to a Drug Testing and/or Treatment Requirement as part of a YRO, a Drug Abstinence Order cannot be imposed on children (see section 58 of the *Powers of Criminal Courts (Sentencing) Act 2000*). Nor can a child be criminalised for "soliciting" / "being involved in prostitution": section 68 of the *Serious Crime Act 2015* recognises that a child in such a situation is a victim of sexual exploitation. This means that

[57] See *Guide to Youth Justice Statistics, Annex A* (MoJ, YJB, HMPPS and YCS, 2020) for information on which data sources have informed which statistics.

a child cannot be made subject to an Engagement and Support Order, which may be used as an alternative to fining adults who are convicted of 'loitering' or 'soliciting'.

The *Guide to Youth Justice Statistics* (MoJ, YJB, HMPPS and YCS, 2020) explains that the data on *sentencing* might include some sentences imposed on 18-year-olds, because the YJAF records the child's age at the time of the first hearing. On this basis, it is possible that the Youth Justice *sentencing* statistics capture the sentences of some young adults, too, which could include the aforementioned orders. However, with the exception of a few cases, if the young person turns 18 before / at sentencing, they will normally transfer to probation, in which case, if they breach a statutory order, this should be recorded by the Probation Service, not the YOT. It is therefore not at all clear why the *offences* of breaching an Engagement and Support Order and breaching a Drugs Abstinence Order are included in the youth justice statistics.

Another problem is the inclusion of breaches of Parenting Orders, and 'failure of a parent to attend a Youth Offender Panel meeting'. This means that the youth justice statistics on offences *by children* may well include 'offences' committed by their adult parents. An e-mail sent to the YJB querying this peculiarity received the following response:

> "The list I provided showed the offences that are mapped to Breach of Statutory Order – *not necessarily all of these have been committed by children but could be.*"
>
> (response from YJB to researcher's query regarding their definition of 'Breach of Statutory Order'. Emphasis added. See Appendix 5 for e-mail correspondence.)

This is despite the fact that the 'proven offences' statistics are described by the Ministry of Justice and YJB as those committed '*by children*'. It is clear, therefore, that based on the inclusion list alone, the statistics for 'breach of statutory order' offences are likely to be inaccurate.

Given that the figures for the number of criminal justice orders imposed in a given year *are* provided in the statistics, it was initially hoped that the number of BSO offences recorded could be compared with the number of criminal justice orders imposed to give a rough indication of the rate at which they were breached. Indeed, this formed the basis of this study's initial sampling strategy (see Chapter 3). However, the YJB's inability to differentiate between criminal justice orders and civil disposals in the BSO offence

category means that the breach rate for criminal justice orders is impossible to determine. As far as we know, every single BSO offence included in the statistics could be a breach of a civil disposal (and/or, for that matter, committed by an adult).

The second significant limitation concerns the criteria employed by the YJB to count BSO offences. They state that:

> "The [BSO] offence is only counted where the failure [to comply 'without reasonable excuse' with the requirements of an existing statutory order] is proved to the satisfaction of the court and the original order is revoked and/or an additional order or other disposal is imposed"
>
> (MoJ and YJB, 2017:2; see also in MoJ, YJB, HMPPS and YCS, 2020:26)

Both criteria are problematic, though for different reasons. To state that "the offence is only counted where the failure is proved to the satisfaction of the court" is redundant at best; misleading at worst. Taking the charitable view (that the statement is redundant), suffice to say that one could not possibly record as a 'proven offence' an alleged offence which was not proven. A more severe critique would accuse the MoJ / YJB of implying one of two things: either that breach offences are not counted where there has been an *admission* of guilt rather than a *finding* of guilt; or, that the actions of failing to comply with the order constitute a BSO offence prior to a court hearing and the determination of guilt. This, of course, is inaccurate. The YOT or Referral Order Panel who refers a young person back to court for failing to comply with the order may well be of the view that the actions / inaction of the young person were 'without reasonable excuse' – thus constituting a BSO offence. But unless they can prove to the court[58] that this was the case, no "offence" can be said to have taken place. This criterion obfuscates the point at which actions (or inaction) constitute an offence (see also discussion in Chapter 2, section 2.4.3).

The other – perhaps more significant – problem relates to the second criterion: that of counting BSO offences *only when* "the original order is revoked and/or an additional order or other disposal is imposed". In other words, the YJB only records BSO offences when the court imposes a new sentence – either replacing or adding to the original order. This automatically precludes all proven BSO offences which result in the continuation of an order (with or without amendments). By failing to incorporate BSO offences which receive an alternative outcome to (re)sentencing, such as the amendment of the

[58] Or an admission of guilt by the young person.

requirements of an order to better suit the young person's needs, or where the order is allowed to continue without change, the reliability of these statistics as an indicator of the prevalence of BSO offences is seriously undermined. BSO offences may be much more prevalent than indicated by the official statistics.

As for the possibility of establishing how many children were in custody as a result of a BSO conviction each year, this is an equally disappointing pursuit. Hart's study into breach in the YJS stemmed from a concern about the high numbers of children who were in custody as a direct result of breach whom, in 2009, constituted 17 per cent of the youth custodial population in England and Wales (Hart, 2010).[59] The official statistics indicate that in the years since the conclusion of Hart's study, there has been a substantial reduction in the proportion of children in custody for the offence of breaching a statutory order. In 2012, according to the statistics, 14 per cent of the children in custody were there for breaching a statutory order. By 2014, this figure had plummeted to a mere two per cent - a figure maintained each subsequent year, except in 2017 where the figure reduced to a negligible 0.2% (MoJ and YJB, 2019).

However, closer scrutiny of these statistics yet again reveals a compelling case for questioning their reliability. Prior to 2012, the primary offence of those who were in custody for breaching a Detention and Training Order (DTO) was recorded as 'breach of statutory order' – in other words, the recorded reason for their incarceration was a BSO offence, not the original offence(s) which led to the imposition of the DTO. This changed with the youth custodial estate's new administrative systems (moving from SACHS to eAsset in 2012 and later to the Youth Justice Application Framework). Since the financial year 2012-13, when children are recalled to custody for breaching a DTO, the reason recorded is the original offence(s), not 'breach of statutory order' (see annual youth justice statistics 2017-18, Table 7.6 – 'Children in Custody' – of the *Supplementary Tables* (MoJ and YJB, 2019c)). As acknowledged by the YJB, this change in recording practice would have significantly reduced the proportion of children recorded as being in custody for breaching a Detention and Training Order.

Moreover, until 2018, it was not possible to determine from the youth custody statistics how many young people were in custody due to a 'breach of statutory order' offence. The YJB notes that "Due to changes of case management systems and improvements in data recording 'Breach of statutory order' data is only available from April 2018 onwards. Prior to April 2018 'Breach of statutory order' data is counted under

[59] The statistics available to and used by Hart did not differentiate between breaches of ASBOs and breaches of criminal justice orders, but additional data provided to her by the YJB for the year 2008-09 indicated that the majority of children in custody for breach were there for breaching a criminal justice order (Hart, 2010).

'Other offences'." (MoJ and YJB, 2021). Taken together, one can infer that the proportion of children in custody for breaching a statutory order between 2012/13 and 2017/18 is likely to be higher than that indicated by the official statistics.[60]

Given these substantial limitations, it is reasonable to conclude that very little meaningful information on the prevalence, rate, and outcomes for breaches of criminal justice orders can be derived from these official statistics.

4.2 YOT breach rates

In an attempt to start rectifying the deficiencies of the official statistics and establish the *actual* breach rates in each YOT as opposed to the 'YJB breach rates' (see last chapter and Glossary), the YOTs' own, raw, data were accessed and analysed. The information presented in this section derives from 'data reports' obtained from the YOTs' case management systems (CMS) by the information officer in each YOT. Fortunately, both YOTs used the same CMS supplier, so the respective information officers were able to apply the exact same criteria to produce very similar reports.[61] Each were asked to run three reports.

- Report X provided a list of the YOT's current statutory caseload – that is, the children who were currently on criminal justice orders;
- Report Y listed all the criminal justice orders which were (a) active during and (b) imposed in the financial years 2014-15, 2015-16 and 2016-17; and
- Report Z listed *all* the breach of criminal justice order (BCJO) offences which were recorded during those same three years, regardless of the 'sentencing' outcome.

Analysis of these data reports revealed that the breach rates of both YOTs varied significantly and were very different to the indications emerging from analysis of the 'official' MoJ/YJB statistics. From here on, YOT A is referred to as Pengaron, while YOT B is referred to as Llanfadog.

[60] While the change in recording around 'breach of statutory order' offences is welcome, the fact that young people in custody for breaching a DTO ('recalled to custody') are not distinguished from the young people there who are serving the first part of the DTO (custodial element) is a continuing problem which makes it impossible to discern the prevalence of DTO breaches which result in recall to custody.

[61] The only difference was that Report Y by Pengaron did not differentiate between standard Youth Rehabilitation Orders (YROs) and YROs with Intensive Surveillance and Supervision: they all came under the "Youth Rehabilitation Order" category. Otherwise, the categories of information were identical.

4.2.1 Reports X: 'current' breach rates

Analysis of Reports X, which provided a cross-section of Pengaron and Llanfadog's statutory caseloads on the 13th of October 2017 and the 5th of February 2018, respectively, revealed varying breach rates. In Pengaron, of the 49 cases which were analysed,[62] five young people had already breached their current order. Six months later, a further five young people from the original cross-section had acquired a BCJO conviction. In total, then, 10 of the 49 young people from the October 2017 caseload formally breached their 'current' order at least once. This suggested that the YOT had a breach rate of approximately 20 per cent. When accounting for the three young people who were in custody at the time Report X was created and who remained there throughout the subsequent six months (thus having no opportunities to breach), Pengaron's breach rate raised to approximately 22 per cent (10 out of 46 young people).

Llanfadog's statutory caseload was slightly larger than Pengaron's when a cross-section was taken on the 5th of February 2018. Of the 57 cases[63] which were analysed, only three young people had already breached their current order. This number increased to seven within six months of taking the cross-section. Four of the young people forming the cross-section were in custody throughout the six months. Excluding these four young people gave Llanfadog a breach rate of approximately 13 per cent (7 out of 53 young people) – significantly lower than Pengaron.

These breach rates were contrary to the indications given by the YJB's statistics, which indicated that Pengaron had consistently maintained a lower 'YJB breach rate' than Llanfadog, at least since 2011-12.[64] Some of the possible causes of this difference have already been identified in the previous discussion on the limitations of the YJB's statistics. Indeed, one explanation could be related to the greater use of antisocial behaviour disposals in Llanfadog – there were six young people on the statutory caseload who had at least one conviction for breaching a criminal behaviour order, and a further two with a conviction for breaching and ASB Injunction. By contrast, none of the young people in Pengaron had any court-imposed antisocial behaviour interventions on their record. While this may be a contributing factor, three other factors must also be considered.

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[62] Pengaron's statutory caseload (the number of 'active' statutory cases) on the 13th of October 2017 comprised 55 cases. However, access to one was restricted by the YOT and so could not be analysed. Five of the cases had a 'caretaking' status – meaning that although the YOT was responsible for delivering interventions / supervision, any breach / enforcement decision-making rested with the 'home' YOT. Given that the purpose of this study was to analyse the YOT's breach decision-making, the five 'caretaking' cases were excluded from analysis because any 'breach history' could not be attributed to Pengaron.

[63] The actual statutory caseload in Llanfadog comprised 61 cases. However, once again, access to one was restricted, and three had a 'caretaking status'. For the same reasons as above, these four cases were excluded from analysis.

[64] In order to maintain the YOTs' anonymity, the 'YJB breach rates' for each YOT are not included in this thesis.

First, while the YJB counts the number of BSO offence convictions (subject to the aforementioned limitations), it does not count the *number of children* to whom the BSO offences are attributed. The same applies to the statutory interventions imposed: it is the number of interventions which is recorded, not the number of young people receiving a statutory intervention. The former (number of BSO offences / number of statutory interventions) is almost certain to be higher than the latter (number of young people to whom BSO offences / statutory interventions are attributed). While both measurements are valuable, it is the number of young people which informs the majority of this study's analyses of YOT data. This decision was taken because young people may be subject to multiple criminal justice orders in a given year. If a young person starts an order, then reoffends and / or is breached, and is subsequently resentenced to a new order, the orders are recorded as two separate statutory interventions. Within a few weeks or months, this might happen again, such that four or five criminal justice orders are attributed to one young person in a given year. While it is accurate to record them as separate interventions, it would be misleading to calculate the YOTs' breach rates based on these measurements.[65]

The second factor which may have contributed towards the variation between YOT data and YJB statistics relates to the inaccurate recording of BCJO offences in the young people's case files. While exploring the case files on Pengaron's case management system, it became evident that some staff did not understand what constituted a BCJO offence. They interpreted and recorded *any* revocation of a statutory order as a BCJO offence, regardless of the reason for the revocation – i.e. whether it was due to non-compliance with the order (BCJO offence), or further offending (not a BCJO offence). There was also some duplication of BCJO offences, with two BCJO offences recorded for some young people who breached a YRO with and Intensive Supervision and Surveillance (ISS) requirement: one BCJO offence was recorded for the YRO, and another for the ISS requirement. The ISS was a requirement of the YRO, so to record two BCJO offences is inaccurate. The same issues were present in Llanfadog too, but to a lesser degree. While it was possible, in this study, to verify every purported BCJO offence and adjust the data accordingly, it was a very time-consuming process. The same data would not have been checked by the YOTs prior to submitting data returns to the YJB, which means that the records received by the YJB which feed into the 'official' national youth justice statistics are inaccurate. This

[65] For example: YOT Q and YOT R both have only one young person on a criminal justice order. The young person in YOT Q has started five separate criminal justice orders in a given year, due to further offending. In the same period, the young person in YOT R has only one criminal justice order. The young person in YOT Q breaches one of his five orders; the young person in YOT R also breaches his only order. If the breach rates were calculated based on the number of active criminal justice orders during the year, YOT Q would have a breach rate of 20 per cent while YOT R's breach rate would be 100 per cent, even though the same number of young people (1) had breached.

further undermines the statistics in terms of providing an accurate picture of the prevalence of BSO offences.

A third factor which may have affected the breach rates captured by these caseloads relates to the timing of the analysis. One cannot assume that the breach rate for one particular cohort of young people over a period of six months is indicative of the YOTs' overall breach rates for a whole year. For this reason, Reports Y and Z were sought from the YOTs' information officers. Reports Y provided a list of all the criminal justice interventions which had been 'active' and 'imposed' during 2014/15, 2015/16 and 2016/17 (these were, at the time, the most recent years for which YJB data had been published). Reports Z provided a list of all the BCJO offences which had been recorded on the YOT's case management system during the same three years.[66] These reports were used to establish the breach rates for each YOT during the three financial years by comparing the number of young people who had acquired one or more BCJO conviction with the number of individuals subject to criminal justice orders during each year.

4.2.2 Reports Y and Z: 'historical' breach rates

In Pengaron, 2014/15 saw 17 young people out of an annual statutory caseload[67] of 150 acquiring one or more BCJO conviction. This equated to a breach rate of approximately 11 per cent. In 2015/16, 20 young people out of 135 had formally breached a criminal justice order – resulting in an increase in the YOT's breach rate to just under 15 per cent. In 2016/17, the number of young people who acquired one or more BCJO conviction dropped to 15 out of 125, equating to a breach rate of approximately 12 per cent.

In Llanfadog, 2014/15 saw 39 young people out of a caseload of 247 formally breaching a statutory order at least once – equating to a breach rate of approximately 16 per cent. In 2015/16, the caseload comprised 229 young people and 35 of these breached an order. This gave a slightly lower breach rate of just over 15 per cent. In 2016/17, 25 young people out of 213 formally breached an order, reducing the breach rate to under 12 per cent.

[66] Although the reliability of Reports Z was challenged immediately – see previous paragraph on inaccuracy of records. The calculations included in this thesis are based on the researcher's verified / cleaned data: each recorded BCJO offence was cross-referenced with the relevant case file where the researcher was able to establish whether a BCJO offence had occurred.

[67] Note that children in custody were omitted from these calculations (due to the impossibility of breaching a sentence while in custody). However, those serving the community element of DTOs were included.

Table 7. Historical breach rates of both YOTs: 2014/15, 2015/16 and 2016/17

Year	YOT statutory caseload (number of young people on a CJO)	Number of young people acquiring ≥ 1 BCJO conviction	Annual breach rate (%)
Pengaron			
2014/15	150	17	11
2015/16	135	20	15
2016/17	125	15	12
Llanfadog			
2014/15	247	39	16
2015/16	229	35	15
2016/17	213	25	12

Due to the inadequacy and unreliability of the MoJ/YJB's official statistics, it is impossible to tell how these breach rates compare to other YOTs on a local, national, or jurisdictional level. However, the chart below illustrates how both YOTs' breach rates compared with each other between 2014/15 and 2016/17, with the dotted lines projecting the trajectory of the breach rates for 2017/18 based on the analysis of the cross-sections (Reports X):

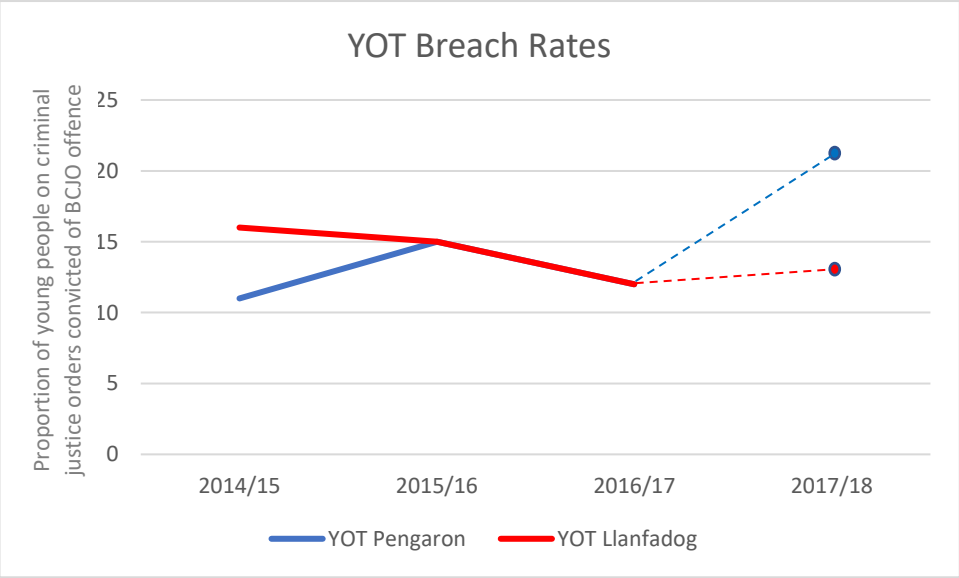


Figure 2. Proportion of young people on criminal justice orders convicted of breaching a criminal justice order: 2014/15, 2015/16 and 2016/17; and projection for 2017/18.

This chart shows that based on the analysis of Reports X, the breach rates for 2017/18 in Llanfadog would have remained stable – staying within the range of four percentage points between its highest breach rate in 2014/15 and its lowest in 2016/17. Pengaron, on the other hand, would have seen a significant increase in its breach rates. Given the breach rates in the three preceding years in Pengaron, it is reasonable to suggest that the breach

rate indicated by Report X was abnormally high, and that it was not necessarily indicative of the YOT's overall breach rate for the financial year 2017/18.[68] Comments made by staff and magistrates during the first phase of data collection in Pengaron (September to December 2017) supported the view that the high breach rate was an anomaly, but could be explained by the fact that the YOT was at that time supervising a particularly 'challenging' group of young people who were persistent both in their offending and in their refusal to comply with their orders (information from the young people's case files corroborated these claims about offending frequency but the 'refusal to comply' narrative was not so clear-cut – see sections 4.3.2.8 and 5.2).

4.2.3 Breach offences by order type

4.2.3.1 Pengaron

In Pengaron, 10 of the 49 active criminal justice orders which formed the YOT's statutory caseload in October 2017 had been breached by April 2018 (six months after the cross-section was taken). Of these 10 BCJO offences, two were of Referral Orders; one of a standard Youth Rehabilitation Order (YRO); four of YROs with an ISS requirement; and three of the community element of Detention and Training Orders. Proportionally, this meant that approximately seven per cent of the Referral Orders in the caseload were formally breached (two out of 29); 12.5 per cent of the YROs (one out of eight); 100 per cent of the YROs with ISS (four out of four); and 60 per cent of the DTOs (three out of five).[69]

[68] This could be tested by analysing the YOT's CMS data on BCJO offences and criminal justice orders for the year 2017/18, but these data were not available at the time the fieldwork was undertaken.
[69] The remaining three young people were on different orders: two in custody following a section 91 sentence; one on a generic 'adult unpaid work order'.

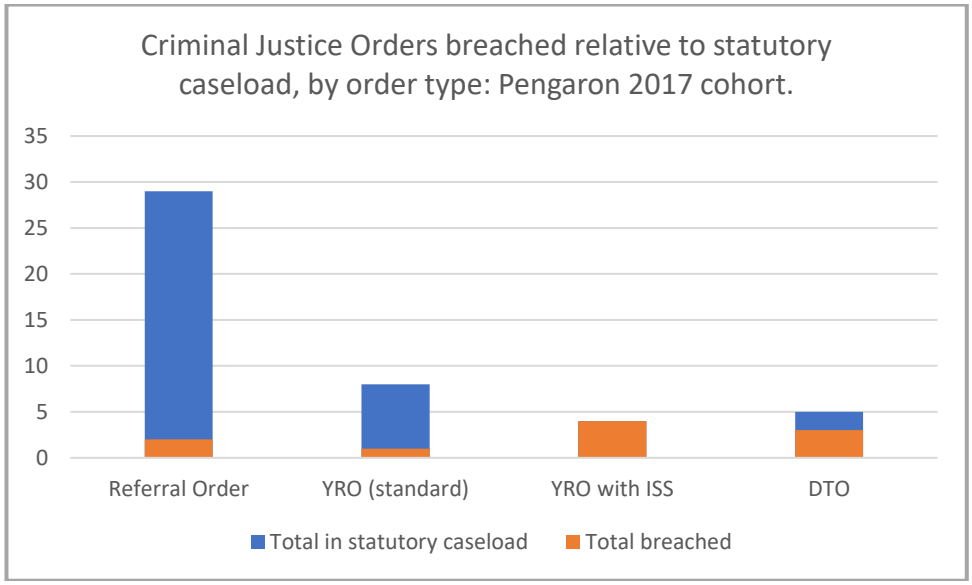


Figure 3. Number of criminal justice orders breached relative to statutory caseload, by order type: Pengaron 2017 cohort.

Data from Reports Y and Z in Pengaron showed that the order which was breached most frequently between April 2014 and March 2017 was the Youth Rehabilitation Order (34 times), followed by the YRO with ISS (20 times), the DTO (16 times), then the Referral Order (15 times). Proportionately, this equated to 6.6% of the 227 Referral Orders which were 'active' during the three years, and 64% of the 25 DTO licences. Unfortunately, the interventions data did not differentiate between standard YROs and YROs with ISS – all were included under the category of "YRO". The proportion of the 162 YROs (inclusive of standard YROs and YROs with ISS) which were formally breached was 33.3%.

During each of the three years from April 2014 to March 2017, DTO licences were breached at a higher rate than the other orders. Of course, it the absence of disaggregated data for the YROs may be concealing a higher rate of breach among the standard YROs or, more likely, the YROs with ISS. Notwithstanding this, nor the fact that far fewer DTO licences were active during each of the three years than any other order, it is nonetheless significant that during the three-year period, more DTO licences were breached (16) than Referral Orders (15) despite there being more than 9 times as many active Referral Orders (227) compared to DTO licences (25) in the same period. DTO licence breaches were also the only offence type to be seen increasing each year, with the breach rate more than doubling between 2015/16 and 2016/17, despite there being a similar number of active licences in both years (11 and 12, respectively).

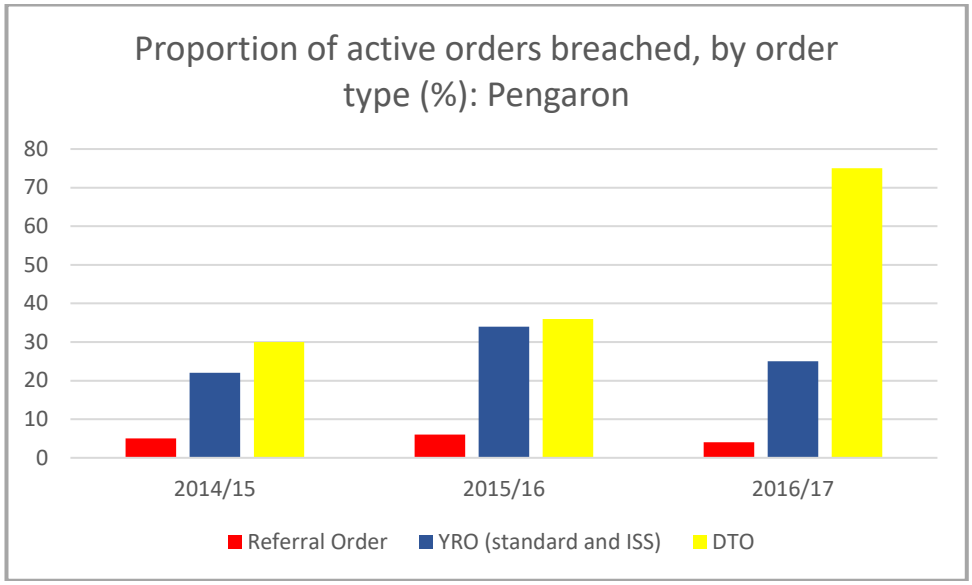


Figure 4. Proportion of criminal justice orders breached by order type: Pengaron 2014/15, 2015/16 and 2016/17.

In terms of the frequency with which a single order was breached, it was rare for Referral Orders to be breached more than once. Of the 15 breaches of Referral Orders between April 2014 and March 2017, 14 were first-time breaches and only one was a "repeat" breach. While this might imply that bringing breach proceedings against the young people proved 'successful' (e.g. in bringing the young person 'back on track' and enabling them to complete their order successfully without further breaches), the sentencing outcomes for these breaches of Referral Orders suggest a different story: 10 of the Referral Orders which were breached for the first time were revoked and a YRO imposed in their place. Such an outcome clearly limits the opportunity to breach a Referral Order for a second or third time.

Although first-time breaches were the most common in relation to the other criminal justice orders too, "repeat" breaches were also more common: for YROs, there were seven second-time breaches and two third-time breaches; for YROs with ISS, two second-time breaches, two third-time breaches, and two fourth-time breaches; and for DTO licences, four second-time breaches. This suggests that although the Referral Order is the type of criminal justice order which is breached at the lowest rate, young people who do breach a Referral Order are less likely to be given another opportunity to comply with the order than those who breach other YROs and DTOs.

4.2.3.2 Llanfadog

In Llanfadog, only seven of the 57 active criminal justice orders which formed the YOT's statutory caseload in February 2018 had been formally breached by August 2018 (six months after the cross-section was taken). Of these seven orders, four were Referral Orders, one was a standard YRO, and two were YROs with ISS. Proportionally, this equated to approximately 11.4 per cent of the Referral Orders in the caseload (four out of 35); 10 per cent of the standard YROs (one out of 10); and 50 per cent of the YROs with ISS (two out of four). None of the four active DTOs were breached within the same period, although two of these young people were serving the custodial element of the order throughout the six-month period so had no opportunity to breach. The remaining four young people were in custody on long-term section 90/91 so they too had no opportunity to breach.

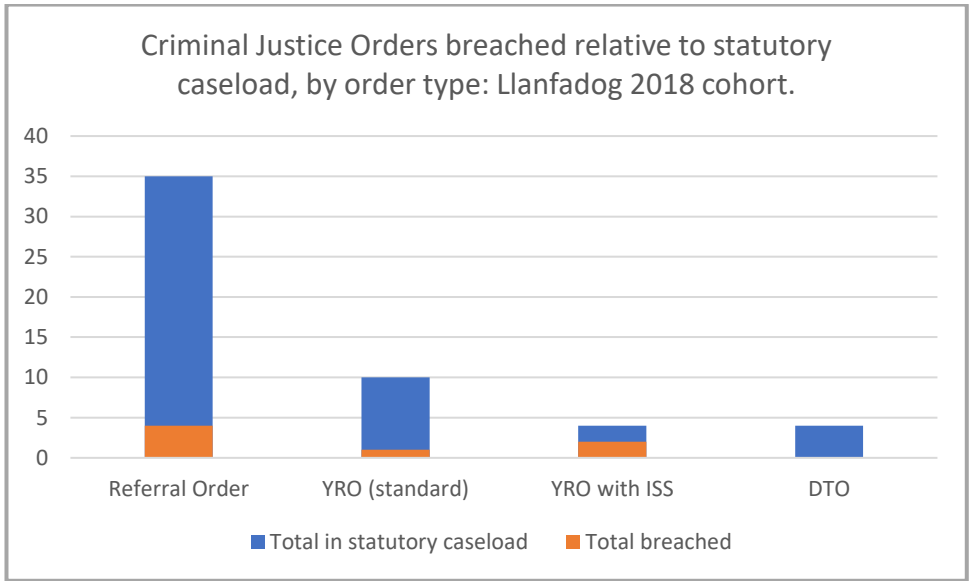


Figure 5. Number of criminal justice orders breached relative to statutory caseload, by order type: Llanfadog 2018 cohort.

Reports Y and Z in Llanfadog showed that the order which was formally breached most frequently between April 2014 and March 2017 was the Referral Order (56 times), followed by the standard YRO (45 times), then the YRO with ISS (24 times), and the DTO (eight times). Proportionately, this equated to 16.3 per cent of the 343 Referral Orders which were 'active' during the three years; 19.9 per cent of the 226 standard YROs; 43.6 per cent of the 55 YROs with ISS;[70] and 16.7 per cent of the 48 different DTO licences.

[70] The information officer in Llanfadog was able to provide disaggregated data for standard YROs and YROs with ISS.

YROs with ISS were the most problematic order in terms of breach, with the rate at which they were breached almost doubling between 2014/15 and 2016/17, from 24 per cent (6 out of 25) to almost 48 per cent (9 out of 19), respectively. The table below illustrates how this contrasts with the breach rates for other orders during the same period: Referral Order breach rates remained relatively stable while the breach rates for standard YROs steadily decreased. Despite fluctuating, the breach rates for DTO licences remained consistently lower than those for YROs with ISS; this is significant because the number of active DTO licences and YROs with ISS were very similar to each other during each of the three years.

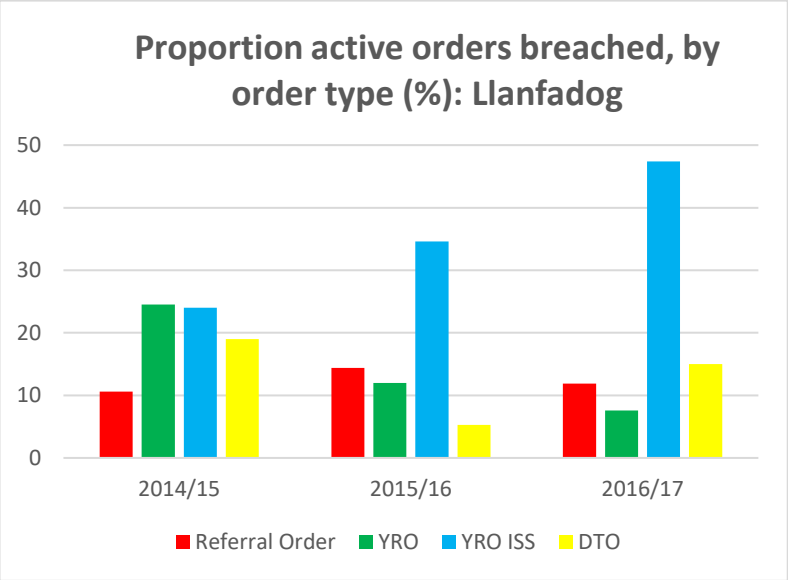


Figure 6. Proportion of criminal justice orders breached by order type: Llanfadog 2014/15, 2015/16 and 2016/17.

As for the frequency with which a single order was breached in Llanfadog, it was very rare for *any* order to be breached more than once. 109 of the total 133 BCJO offences recorded for the three years 2014/15 to 2016/17 were first-time breaches. Twenty were second-time breaches, and the remaining four were third-time breaches. In total, 49 of the 56 breaches of Referral Orders were first-time breaches, and the remaining seven second-time. 37 of the 45 standard YRO breaches were first-time; six second-time; and two third-time. 16 of the 24 YRO with ISS breaches were first-time; six second-time; and two third-time. All but one of the DTO breaches were first-time; the other was a second-time breach.

4.3 Demographics of the young people

As explained in Chapter 3, the case files of 32 young people were reviewed in depth. Sixteen had at least one BCJO offence on their record, while the other sixteen had none. The cases were selected from a cross-section of each YOT's statutory caseload in order to trace each incident of non-compliance by the young people, identify the stated and / or potential reasons for the non-compliance, and analyse the process followed, decisions made, and outcomes that ensued. During this process, data on the young people's demographics and youth justice histories were also recorded. However, prior to undertaking this in-depth analysis of the selected case files, an analysis of gender, ethnicity, 'looked after' status, and age was conducted on all the case files which comprised the cross-sections of the caseloads. Both datasets revealed some significant differences between those who had at least one BCJO offence on their record (for ease, this cohort is referred to as the 'breach cohort') and those who had none (referred to as the 'non-breach cohort'). The two subsections below provide statistical information about the demographics of the two groups. Findings from the two datasets (cross-section data and selected case files data) are presented separately.

A few caveats must be highlighted before proceeding with the findings. First, the validity of the following analyses depends entirely on the accuracy of the YOTs' data. One example of inaccurate record-keeping has already been mentioned: staff recording BCJO offences where none had occurred due to a misinterpretation of the BCJO offence. This researcher was fortunately able to investigate these records and adjust the data accordingly; however, it is entirely possible that other inaccuracies were contained in the young people's case files which went unnoticed.

Second, the information contained in the case files was often wanting. It was not assumed that the absence of records in the case files (e.g. mental health diagnoses, disclosures of domestic abuse) reflected the reality of a young person's situation. There are many reasons why such information would be missing (see discussion Chapters 2 and 3, especially sections 2.4.2 and 3.5.1). Although efforts were made to fill in the voids by talking to practitioners, there were some instances where reading between the lines was necessary.

Finally, the shortfalls of presenting decontextualized data must be acknowledged. The purpose of this section is not to 'explain away' the issue of breach by making causal links between the demographics of the young people and their likelihood of breaching their

orders. Rather, it is to provide an overview of the youth justice histories and socio-demographic of both groups.

4.3.1 Cross-section case files (n=106)

This sample consisted of 49 case files from Pengaron and 57 case files from Llanfadog. At the time the cross-sections were taken, 11 of the young people in Pengaron had a breach history, compared to eight in Llanfadog. The remaining 87 young people had no BCJO offences on their records at that time.

4.3.1.1 Gender

It is well-established that the vast majority of the young people in contact with the YJS in England and Wales are male. In 2017/18, they accounted for 84 per cent of the children and young people who received a caution or sentence in England and Wales (YJB and MoJ, 2019). This was reflected at the statutory level in both YOTs. In Pengaron, the statutory caseload at the time the cross-section was taken comprised 40 boys (including one trans-boy) and nine girls. In Llanfadog, 53 of the caseload were boys, with only four girls. In total, 93 of the 106 young people on statutory orders were boys, equating to almost 88 per cent of the total cases.

In both YOTs, the entire breach cohort (i.e. those with a breach history) were boys.[71] Although the total number of those with a breach history across both YOTs was small (n=19), the fact that 100 per cent of these young people were boys nonetheless suggests that they are over-represented in the category of young people with BCJO convictions. An analysis of all BCJO offences recorded on the YOTs' case management systems between April 2014 and March 2017 revealed that: in Pengaron, 85 BCJO offences were recorded, attributed to 42 different young people. Of these 42 young people, only four were girls. This means that over 90 per cent of the young people with a breach history during those three years were boys. In Llanfadog, 133 BCJO offences were recorded, attributed to 89 different young people. Of these young people, 77 – or 86.5 per

[71] One female in Pengaron was breached three months after the cross-section was taken.

cent – were boys. If it is assumed[72] that 88 per cent of the statutory caseload were boys (as above), they would be slightly over-represented in the breach cohort in Pengaron and slightly under-represented in Llanfadog.

It is important to note that, given the low proportion of the statutory caseloads who were girls (particularly in Llanfadog), the variations in terms of the prevalence of girls among those who were breached could be well within what may be anticipated by chance. However, a detailed examination of the case files (see sections 4.3.2 and 4.4) showed that, in terms of non-compliance, there was no clear difference between the boys and the girls: i.e. non-compliance featured in most of the girls' and most of the boys' case files. Conversations with YOT staff indicated that the gender difference more accurately reflected a difference in practitioners' response to non-compliance: they spoke of a greater reluctance among some YOT case managers to breach the girls for instances of non-compliance, primarily due to their perception of them as presenting greater welfare needs and a 'lower risk' to the public. This became a recurring theme during interviews and informal conversations with the staff in both YOTs and, as such, required further investigation. Consequently, the case files of all the girls (n=13) were interrogated for evidence of 'greater welfare needs' and 'lower risk', as well as any other possible explanation for the gender difference in breaches. The findings are presented in subsection 4.4 of this chapter.

4.3.1.2 Age

Children were more likely to be breached aged 15 years or older. Only one of the 11 young people with a breach history in Pengaron, and two of the eight in Llanfadog, had acquired one or more BCJO offence while younger than 15 years, even though all but one had received their first statutory order at an age younger than 15 years. Between them, the breach cohort (n=19) had accumulated 43 BCJO offences (28 in Pengaron and 15 in Llanfadog). The largest proportion of these BCJO offences were attributed to the young people when they were aged 17 years (18 BCJO offences). Thirteen BCJO offences were attributed to 15-year olds; seven to 16-year olds; three to 14-year olds; and two to a 12-year old.

A similar pattern emerged from the historical data. Between April 2014 and March 2017, 85 BCJO offences were recorded in Pengaron. None of the 42 young people to

[72] It was not possible to identify the number of males and females who constituted the YOTs' statutory caseload during these three years without accessing more than a thousand case files. Considerations of time and priorities took precedence and precluded this as a realistic aim to pursue.

whom these BCJO offences were attributed were younger than 15 years when the breach proceedings took place. The youngest age was 15 years and two months. The oldest was 18 years. The largest proportion of BCJO convictions were accounted for by 17-year olds (42 BCJO offences). 18-year olds accounted for 20 convictions; 16-year olds for 12 convictions; and 15 year-olds for 11 convictions. In Llanfadog, five of the 89 young people to whom the 133 BCJO offences were attributed were younger than 15 years at the time of conviction. The largest proportion of BCJO convictions were accounted for by 17-year-olds (67 convictions), followed by 16-year olds (29 BCJO offences); 15-year olds (18 BCJO offences); and 18-year olds (9 BCJO offences).

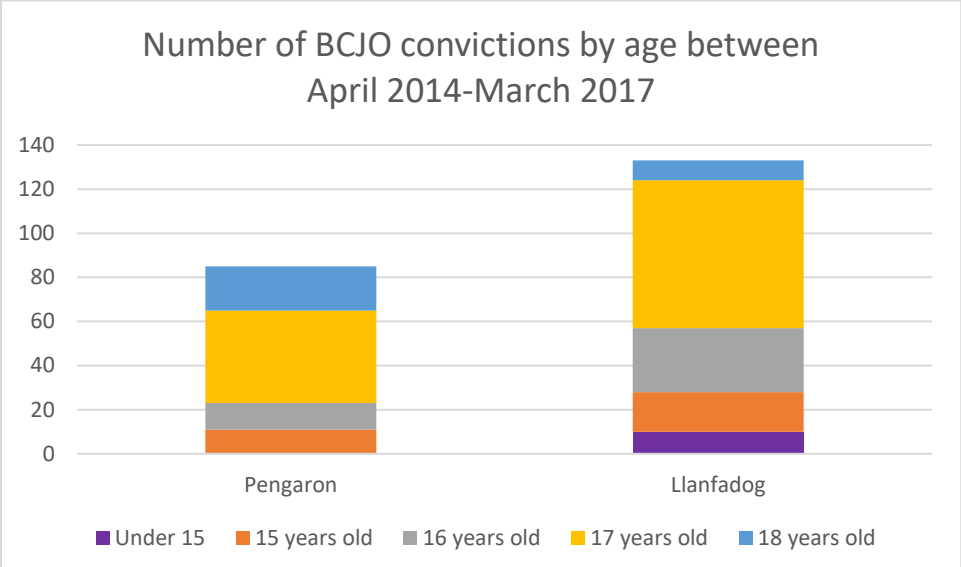


Figure 7. Proportion of BCJO offences between April 2014-March 2017, by age.

4.3.1.3 Looked-after status

As with the gender difference in the YJS, it is common knowledge that a disproportionate number of children and young people who have been / are in public care ('children looked after', or 'CLA') are found in the YJS (see Laming, 2016; see also Chapter 2). Analysis of the young people's case files not only reflected this over-representation of CLA in the cohort of children on criminal justice orders; it also identified that a disproportionate number of CLA on CJOs were breached, compared to their non-CLA counterparts.

In Pengaron, boys who were CLA[73] made up 47.5 per cent (19 out of 40) of the males in the statutory caseload. They were substantially more likely to have a breach

[73] Any reference to children who "were CLA" encompasses both those who were looked-after at the time the cross-section was taken and those who were not looked-after at the time but had been in the past (i.e. they had experience of the care system).

history than their non-CLA counterparts: of the 19 boys who were CLA, 10 had at least one BCJO conviction at the time the cross-section was taken.[74] By contrast, only one of the 21 non-CLA boys had any BCJO convictions. Put another way, of the 11 young people in the breach cohort, 10 – or approximately 91 per cent – were or had been CLA. Six of the nine girls in the original sample were CLA and three were not, but none had any BCJO offences on their record when the cross-section was taken.

In Llanfadog, 14 of the 53 boys – approximately 26 per cent – were CLA. Of these, four had at least one BCJO conviction at the time the cross-section was taken. The other four young people with a breach history were not CLA. In other words, half of the breach cohort were CLA and half were not. Given that only 26 per cent of the total (male) caseload were CLA, they were clearly over-represented in the breach cohort. All four girls were CLA, but none had any BCJO offences on their records.

In both YOTs, then, the proportion of 'looked after' boys in the breach cohort was approximately twice the proportion of 'looked after' boys in the overall cohort of boys on statutory orders.

To put these figures in context, in 2017/18, there were 3,380 CLA aged 10 to 17 (inclusive) in Wales (StatsWales, 2019). In mid-2017, the 10 to 17 population estimate for Wales was 272,784 (StatsWales, 2018). The proportion of 10 to 17-year-olds in Wales who were CLA, therefore, was around 1.24 per cent. Evidently, compared to the national average, CLA were significantly over-represented both in the total statutory caseload and in the breach cohort in both YOTs, with this over-representation more pronounced in Pengaron than Llanfadog. While the proportion of CLAs in each YOT local authority area cannot be included here (to do so would compromise the YOTs' anonymity), a very similar over-representation of CLAs on statutory orders and in the breach cohort existed in relation to the local, as well as national, CLA population.

4.3.1.4 Ethnicity

Each of the 49 young people in Pengaron's statutory caseload were recorded as 'White – Welsh', 'White – British' or 'White – Other'. The usual over-representation of black and ethnic minority (BME) individuals in the criminal justice system did not feature in this caseload, which was unsurprising due to the very small BME population in the YOT area.

[74] This finding relates only to boys because none of the girls who were on statutory orders at the time the cross-section was taken had any BCJO offences on their records. A significant proportion of *both* males and females had, however, been in care: 55.6 per cent of the girls, compared to 47.5 per cent of the boys (note that the sample sizes are very different – there were 40 boys in the sample compared to just 9 girls).

In Llanfadog, eight of the 57 young people were recorded as BME, three as Eastern European, and the rest as 'White-Welsh' or 'White-British'. Although the obligation to protect the anonymity of the YOT means that the figures for the YOT area's population by ethnicity cannot be identified here, suffice to say that young BME people were over-represented in the statutory caseload. In relation to the breach cohort, one of the eight was black, and the others white. While one in eight is clearly an over-representation in relation to the general population, the very small sample size means that one cannot extrapolate from the data that BME people were more likely to be breached than their white counterparts. In fact, very little meaningful analysis could be done on such a small sample.

4.3.2 Selected cases files (n=32)

The precise way in which this sample of case files was chosen was clarified in the previous chapter (section 3.2). Suffice to say that both cohorts – the 16 young people with a breach history and the 16 without – were matched as closely as possible according to gender (male); age (16 years or older at the time the cross-sections were taken); and number of previous criminal justice orders (at least one). It was not possible to match the two groups according to their current orders as generally, those with a breach history were subject to more onerous orders at the time the samples were taken.

4.3.2.1 Previous interventions

The interventions history of each of the 32 young people was accessed where it was possible to establish how many YOT interventions each young person had been subject to. These were categorised into three types: **criminal justice sentences** (including first-tier penalties, community sentences, and custodial sentences); **pre-court interventions** (youth cautions, youth conditional cautions, reprimands, final warnings, youth restorative disposals, and community resolution disposals); and **'prevention' interventions** (these varied widely, ranging from antisocial behaviour interventions to SPLASH activities, but all were voluntary and provided by the YOTs). Note that the only interventions counted in this study are those which had been partially or fully completed. Interventions which were offered but declined or withdrawn for other reasons (recorded in the case files as 'intervention no longer appropriate') have not been included in the following calculations.

In Pengaron, there was very little difference between the average number of total interventions on the records of both groups: both had an average of seven interventions

(when rounded up/down to the nearest whole number).[75] In terms of the different types of interventions, however, there was a marked difference between the two groups. The breach cohort had on average almost twice as many criminal justice sentences on their records compared to their counterparts – four compared to two, respectively – while they had half as many pre-court interventions – one and two, respectively. Both groups averaged two 'prevention' interventions.

In Llanfadog, the average number of total interventions was higher for the breach cohort (six) than for the non-breach cohort (four). This difference was primarily attributed to the criminal justice sentences: like Pengaron, those with a breach history in Llanfadog had on average almost twice as many criminal justice sentences on their records than those with no breach history – four and two, respectively. Both groups had very few pre-court interventions on their records: the average for both groups was less than one. In relation to 'prevention' interventions, the breach cohort had almost three times as many as the non-breach cohort, averaging three and one, respectively.

The lack of pre-court interventions on children's records *in general* suggests that, in both YOTs, diversion from the formal criminal justice system – an essential strategy for the 'children first' principle of minimizing harm – was not used maximally. Indeed, this suggestion was strengthened by some comments made by many practitioners in both YOTs which betrayed their lack belief in the pre-court diversionary process. Many staff suggested that children were 'getting away with' serious offences by being diverted from the courts, with some going so far as to say that the diversion process made young people more likely to reoffend because there were no 'real consequences'. Coupled with the fact that in both YOTs, those with a breach history tended to have twice as many criminal justice sentences than those with no breach history, this suggests that 'up-tariffing' may be an accepted / expected response to non-compliance. The fact that in Llanfadog, the ones with the most criminal justice interventions (breach cohort) also averaged three times as many prevention interventions as those without a breach history, suggests that these prevention interventions may be resulting in the opposite of their intended effect, propelling children into the system rather than preventing them from entering it.

4.3.2.2 Age at first YOT intervention

The ages of all 32 young people when they were subject to their first YOT intervention (of any kind) was noted. Interestingly, in Pengaron, the breach cohort tended to be older than

[75] All of the numbers in this subsection have been rounded to the nearest full number.

the non-breach cohort when they first encountered the YOT. The average age of the breach cohort on their first YOT intervention was 14 years and nine months, whereas it was 13 years and eight months for the non-breach cohort.[76] In Llafadog, it was the breach cohort who were younger, averaging 13 years and five months at their first intervention compared to the non-breach cohort who averaged 14 years and seven months.

At the time the cross-section was taken in Pengaron, the breach cohort had been involved with the YOT, on average, for two years and five months. Recall that between them, these eight young people had accumulated 28 BCJO offences between them and been subject to an average of four criminal justice orders. The non-breach cohort had been involved with the YOT for slightly longer – an average of two years and ten months – and had averaged only two criminal justice orders. In Llanfadog, the breach cohort had known the YOT for an average of four years, with the eight young people accumulating 15 BCJO offences between them and subjected to an average of four criminal justice orders. The non-breach cohort in Llanfadog had been involved with the YOT for the same average length of time as the non-breach cohort in Pengaron – two years ten months – and had, on average, two criminal justice orders.

4.3.2.3 Stability of accommodation

In both YOTs, the accommodation records of the breach cohort were characterised by instability to a much greater degree than the non-breach cohort. On average, those with a breach history had seven different addresses and nine different moves on their accommodation records, while the non-breach cohort had three and four, respectively. One of the young people with a breach history (excluded from the average calculation above due to the potential to skew the data) had 27 different address changes on his record since first becoming involved with the YOT three years earlier. These moves were not due to changes in family home; to the contrary, a large proportion of the addresses on the breach cohorts' records were hostels, supported accommodation, and / or bed and breakfast accommodation.

There was a clear correlation between having experience of the care system (CLA) and instability of accommodation. In Pengaron, 10 of the 16 young people had moved accommodation[77] more than five times since the start of their involvement with the YOT

[76] These ages do not necessarily reflect the age at which they had first *contact* with the YOT – as mentioned, these averages are based only on interventions that were partially or fully completed. This data fails to capture interventions which were offered and then subsequently withdrawn or rejected.
[77] This does not include moves to custodial institutions.

(seven of the breach cohort, three of the non-breach cohort). Of these 10, eight were CLA and two were not. Three of these young people had moved accommodation more than 10 times: they were all CLA. None of the CLA had less than three moves of accommodation on their record, while three of those who were not CLA had not moved once.

In Llanfadog, seven of the 16 young people had moved accommodation more than five times since the start of their involvement with the YOT (four of the breach cohort, three of the non-breach cohort). Each of these young people were CLA. Only one CLA had fewer than three moves of accommodation on their record, while all eight of those who were not CLA had either moved once or had not moved at all.

Out of the 32 young people, 10 were recorded as having spent time in 'unsuitable' accommodation (seven in Pengaron and three in Llanfadog). Almost all the incidents of 'unsuitable' accommodation were local authority placements, usually in a Bed and Breakfast. In Pengaron, there was one Bed and Breakfast in particular which was used systematically to place young people aged 16 or older which all the YOT staff who were spoken to deemed not only to be 'unsuitable' but also unsafe. In the words of one YOT practitioner:

> "[Children's Services] tell us that being placed in unsuitable accommodation is undesirable, not illegal…"
>
> CM10, Pengaron

This is despite primary legislation which places a general duty on local authorities to secure sufficient accommodation for looked after children which "meets the needs of those children"[78], and a Code of Practice which states that "Local authorities should do *everything possible to avoid the use of Bed and Breakfast* accommodation, which are generally not suitable for vulnerable young people. Where this type of accommodation is used because there are no alternatives immediately available, it should only be for very short periods, and *great care* should be taken to ensure the premises and proprietor meet *good and safe standards*" (Welsh Government, 2016a:118, emphasis added).

4.3.2.4 Education, Training and Employment

Each of the 32 case files were combed for information which shed some light on the young people's educational record and their current and previous engagement with any form of

[78] Under section 75 of the Social Services and Well-being (Wales) Act 2014. Although note the caveat "so far as reasonably practicable".

education, training and / or employment (ETE). Despite there being an 'education' tab in each young person's case file where practitioners could keep a record of the young people's ETE, most of the information related to the young people's current engagement with forms of ETE, not their historical records. ASSET and AssetPlus assessments contained some useful historical information, but the information was piecemeal and there were often large gaps which could not be adequately filled in, even after talking extensively with the practitioners and listening to the information volunteered by the young people themselves. The data in this section, then, are shared tentatively. The reader should also recall the caveat highlighted at the beginning of this section – that the absence of something (e.g. an academic or vocational qualification) in the files does not necessarily reflect the reality of a person's situation.

4.3.2.4.1 School exclusions

Two of the most prominent characteristics shared by the breach cohort in both YOTs were:

a) their enrolment in an 'alternative provider' of education (most commonly, pupil referral units) following exclusion from mainstream schools; and
b) their subsequent exclusion from the alternative provision.

In Pengaron, all eight of the breach cohort were excluded from mainstream school(s); seven were subsequently enrolled in alternative education provision, five of whom proceeded to be expelled. Many of the non-breach cohort were also excluded from mainstream school – six of eight – and five of these subsequently attended alternative provision. Three of those who attended alternative provision were excluded. Two of the non-breach cohort attended mainstream school without any periods of exclusion.

In Llanfadog, seven of the eight young people in the breach cohort were excluded from mainstream school; each of the seven were subsequently enrolled in and excluded from alternative education provision. The one young person with a breach history who did not have any exclusions attended mainstream school on a full-time basis. The non-breach cohort in Llanfadog were also excluded from mainstream school but at a lower rate: four of the eight young people. Five of the non-breach cohort attended alternative provision, three as a result of mainstream exclusion and two because they had statements of special educational needs (SEN) which could not be catered for by mainstream schools. Only two of the five were excluded from their alternative provision – both from a pupil referral unit.

4.3.2.4.2 Qualifications

Before turning to the young people's qualifications (academic or otherwise), it is worth reminding the reader that each of the 32 young people were aged 16 or over at the time their case files were reviewed. Absences of qualifications cannot therefore be attributed to the young people's school age; if they had proceeded through schooling as normally expected, they would have obtained some qualifications by the age of 16. However, as previously mentioned, qualifications may simply have not been recorded by the YOT. To account for this possibility, when no qualifications could be found on a young person's record, the researcher recorded "none recorded" rather than "none".

In Pengaron, five of the breach cohort had between one and three qualifications on their record, while three had none recorded. The qualifications varied from GCSEs, to Entry Level Numeracy and Literacy qualifications, to basic construction qualifications. Only four of the non-breach cohort had one or more qualification on their record, but their qualifications were greater in number and in level of attainment compared to those in the breach cohort (e.g. one young person had five A*-C GCSEs while another had four).

In Llanfadog, only two of the breach cohort had between one and three qualifications on their record, and both achieved these qualifications while serving a custodial sentence. By contrast, six of the non-breach cohort had at least one qualification on their record, four of whom had at least three GCSEs. In both cohorts in Llanfadog, there was one young person who was described as an excellent student and on track to achieving multiple GCSEs when they were excluded from their respective schools for their offences.

4.3.2.4.3 Current engagement in education, training or employment (ETE)

In terms of the young people's engagement with ETE, all available information about their ETE placements / attendance for the six months immediately prior to the date of the cross-sections was recorded. In Pengaron, five of the breach cohort had not been in any form of ETE during those six months, with the exception of those on a YRO with ISS who, as a requirement of their order, attended some 'education' sessions at the YOT. Another young person had been offered two mornings per week of one-to-one tuition at home; he attended for three mornings then stopped. One young person who was in custody at the time was recorded as having engaged in education sessions at the YOI, and the eighth young person in the breach cohort had started and successfully pursued a two-day week apprenticeship at

a local garage for approximately six weeks. The non-breach cohort in Pengaron generally had more success in relation to ETE: three of them were in part or full-time employment; one was attending a further education college; one had been attending a pupil referral unit for three days per week until one month prior to the cross-section being taken; one was engaging with 'education' sessions in custody; which left only two who had no engagement with any form of ETE during the six months in question.

In Llanfadog, one of the breach cohort was in full-time employment, and another had been attending a sixth-form college on full-time basis until he was excluded for his offence two months previously. No record of any engagement with ETE during the six months was found for any of the other six young people with a breach history, except for one of the two who were in custody who was said to have engaged with education sessions there. Again, similar to Pengaron, more of the non-breach cohort in Llanfadog were engaged in some form of ETE compared to the breach cohort. Three of the non-breach cohort worked at least 25 hours per week; another had been engaging with a variety of provisions, including traineeships, courses at a college, and had finally settled on 16 hours per week in an 'alternative curriculum' centre, along with another young person who did three days per week at the same centre. Only one of the non-breach cohort did not engage with any ETE during those six months; the eighth young person had been attending college on a full time basis until he was excluded three months prior to the cross-section date.

4.3.2.5 Speech, language and communication needs (SLCN) and Behavioural, Emotional and Social Difficulties (BESD)

Diagnoses of SLCN were rare across the entire cohort of 32 young people. In Pengaron, only one of the breach cohort and one of the non-breach cohort had a diagnosis (autism spectrum disorder (ASD), and global developmental delay (GDD), respectively). In Llanfadog, three of the breach cohort had an SLCN diagnosis (two had ASD and one had GDD), and one from the non-breach cohort had a diagnosis of ASD. Behavioural, emotional and social difficulties (BESD) were much more common: in Pengaron, four of the breach cohort and five of the non-breach cohort had a diagnosis of BESD. Of these nine young people, five had an additional diagnosis of attention deficit and hyperactivity disorder (ADHD). In Llanfadog, six of the breach cohort and three of the non-breach cohort had a BESD diagnosis, and of these nine young people, five had a diagnosis of ADHD.

4.3.2.6 Mental health

Mental health difficulties were very common among the young people in both YOTs. In Pengaron, four young people with a breach history had a diagnosis of either / both depression and anxiety disorders. A further three of the breach cohort self-identified as suffering from either / both depression and anxiety. One of the non-breach cohort had a diagnosis of depression and anxiety disorders, and a further three self-identified as struggling with either or both depression and anxiety. In Llanfadog, five of the breach cohort and three of the non-breach cohort had either a diagnosis or had self-identified as suffering from either or both depression and anxiety. Another young person had a diagnosis of post-traumatic stress disorder.

The deleterious impact of these mental health difficulties was reflected in the young people's records of self-harm and contemplation of / attempts at suicide. In Pengaron, two of the breach cohort had attempted suicide on at least one occasion; a further two young people (one with a breach history and one without) admitted to having contemplated suicide. Six of the breach cohort and two of the non-breach cohort had disclosed that they had self-harmed. In Llanfadog, one of the breach cohort had attempted suicide. A further five young people (four with a breach history and one without) had disclosed that they contemplated suicide. Seven of the breach cohort and two of the non-breach cohort had disclosed self-harm.

Despite the young people's struggles with their mental health, they did not receive adequate support. A common complaint among the staff in both YOTs was how difficult it was to secure an initial appointment with the Children and Adolescents' Mental Health Service (CAMHS), with young people often having to wait months to be seen. This was exacerbated by the stringency with which CAMHS applied their 'missed appointments' policy; YOT staff talked about children being taken off the outpatient list after missing one appointment – regardless of the reason.

4.3.2.7 Substance use

Most of the young people – 22 out of 32 – were recorded as using at least one illegal drug on at least a weekly basis. The remaining 10 young people were recorded as having never used any illegal substance. Alcohol use seemed to be very rare among the young people, with only two of the case files stating that the young people's alcohol consumption was regular.

Of the 22 young people who were using or had used drugs, 16 reported using cannabis on a daily basis, while the other six had either used it in the past, or used it 'occasionally' for 'recreational' purposes. Eight of the 16 young people who used cannabis on a daily basis were also recorded as using other drugs – including, but not limited to, heroin, ecstasy, cocaine, ketamine, and a range of synthetic cannabinoids (most commonly, 'spice').

Substance misuse was recorded as being a significant factor contributing towards the young people's offending in 13 cases in the breach cohort and seven in the non-breach cohort. It was deemed to be a significant factor for a variety of reasons, but the most common were: the young person's offences were drugs-related (e.g. possession of drugs, possession with intent to supply, and / or theft-related offences); or some of their offences were committed while under the influence of drugs. Although AssetPlus did not require practitioners to answer a question about the relationship between drug use and non-compliance, many of the staff who were interviewed stated that it was a contributing factor to non-compliance (see Chapters 6 and 7, sections 6.2.1 and 7.2).

In contrast to the poor provision and access to mental health services, children could easily access substance misuse support. This was because both YOTs had dedicated substance misuse workers. While the impact of this support on young people's use of substances was not investigated, young people in both YOTs reported enjoying these sessions. It seems that these sessions had a beneficial function regardless of their impact on substance use, given the positive relationship formed between many of the young people and the YOTs' substance misuse worker.

4.3.2.8 Offending history

In both YOTs, those with a breach history tended to have a longer offence history and many more court appearances than those without. They also had a much greater number of charges on their record which had either been dismissed by the court, resulted in acquittal, or withdrawn by the prosecution due to lack of evidence.

On average, the breach cohort in both YOTs had more than twice as many criminal offence convictions[79] on their records than the non-breach cohort. In Pengaron, these figures were 29 and 13 convictions, respectively.[80] In Llanfadog, the figures were 22 and nine. This confirmed the comments made by YOT practitioners in Pengaron in relation to

[79] Offences for which they were accused but which were dismissed, discontinued, or acquitted have been excluded from these calculations.
[80] Numbers have been rounded up or down to the nearest whole number.

the current cohort of young people under their supervision being particularly persistent in their offending (see section 4.2.2). In relation to court appearances, the breach cohort in Pengaron on average had 24 while the non-breach cohort had 12 – approximately twice as many appearances. In Llanfadog, the difference was almost fourfold: 32 and eight, respectively.

In terms of the *types* of offences being committed by the young people, in Pengaron, the predominant offence type by the breach cohort was theft. This was followed by possession of drugs (with or without intent to supply), various lower-end offences of violence against the person (most commonly common assaults and assaults by beating), public order offences, and criminal damage. Breaches of statutory orders were the next most common, followed closely by burglaries and breaches of bail conditions. The least common offences were robberies (two young people had one robbery conviction each); breach of restraining order (one young person had multiple convictions); and intimidation of a witness / juror (one young person had one conviction).

The most common offence among the non-breach cohort in Pengaron were lower-end violence against the person (common assaults, assaults occasioning actual bodily harm, and assault by beating). This was closely followed by public order offences and thefts, then criminal damage, motoring offences (i.e. driving without a licence or insurance), breach of bail, and possession of an offensive weapon in a public place. The least common offences were attempted robbery and robbery (one young person had a conviction for both offences), fraud (one young person), inflicting grievous bodily harm without intent (one young person), and assault with intent to inflict grievous bodily harm (one young person). Only one of the non-breach cohort had any drugs offences on their record – one conviction for possession of cannabis (no intent).

In Llanfadog, the most common offence types among the breach cohort were lower-end violence against the person, public order offences, drugs possession (with intent to supply and for personal use), theft, and vehicle theft (especially being carried in a vehicle taken without consent). Burglary was the next most common, followed possession of a knife blade in a public place, possession of an offensive weapon in a public place, motoring offences, breach of statutory orders, criminal damage, and breach of Criminal Behaviour Orders. The least common offences were robbery (two young people had a robbery conviction), higher-end violence against the person offences (one young person had a conviction for grievous bodily harm (GBH) with intent, and another young person for GBH without intent), breach of bail (one young person), and breach of conditional discharge (one young person).

The most common offence among the non-breach cohort in Llanfadog was possession of drugs (personal use), closely followed by possession of drugs with intent to supply. Next were public order offences, followed by possession of either a knife or an offensive weapon in a public place, lower-end violence against the person, criminal damage, theft, burglary, then breach of criminal behaviour order. The least common offences were sexual offences: one young person had one sexual offence conviction and another had multiple convictions. None of the non-breach cohort in Llanfadog had any GBH convictions.

While it is clear that the breach cohort in both YOTs tended to offend (or at least, got caught for offending) at a greater frequency than the non-breach cohort, there appeared to be no significant differences overall in terms of the seriousness of the offences committed by both groups. It seems, therefore, that the difference in sentencing (the breach cohort tended to have more onerous / higher tariff interventions than the non-breach cohort) was affected by the volume of offences committed, as well as their seriousness.

4.3.2.9 Domestic violence, family breakdown, Child Protection Register

In Pengaron, seven of the breach cohort and three of the non-breach cohort were recorded as having been a victim of domestic violence – by witnessing the abuse between other family members and/or by being a direct target of the abuse. Domestic violence was one of the primary contributors leading to the young people being accommodated elsewhere by the local authority and being assigned the label, at least temporarily, of 'children looked after'. Each of the seven young people in the breach cohort who had experienced domestic violence, and one of the three in the non-breach cohort, had also been subjected to family breakdown – i.e. their nuclear family had separated, and the young people had often been removed from a parent or both parents and / or been separated from their siblings. They had also been on a Child Protection Register (CPR) on multiple occasions, with the primary reasons being 'abuse' and 'neglect'. A further three of the non-breach cohort had been on a CPR at least once for 'neglect'.

A similar picture was present in Llanfadog. Seven of the eight young people in the breach cohort and two of those in the non-breach cohort were recorded as being victims of domestic violence. Each of the seven in the breach cohort had experienced family breakdown, though only four were placed in the care of the local authority (temporarily or permanently). The other three spent time living with various family members, such as older siblings and uncles, aunts, step-parents, or grandparents. The two young people in the

non-breach cohort who were recorded as victims of domestic violence were taken into care by the local authority on at least one occasion. Five of the seven in the breach cohort and the two in the non-breach cohort who had experienced domestic violence had also been placed on a CPR on multiple occasions for the same reasons as above: 'abuse' and 'neglect'. It was unclear why the other two in the breach cohort had not been placed on a CPR, as the evidence of domestic violence was significant. A further two young people in the non-breach cohort had been placed on a CPR, one for 'emotional abuse', the other for 'neglect'.

4.3.2.10 Supportive relationships

The extent to which young people had supportive relationships with significant others (e.g. family members, friends, partners, coaches, teachers) was difficult to establish, not least because many of the relationships the young people oscillated between consistent support then breakdown and estrangement. Nevertheless, the following information (taken primarily from the young people's AssetPlus assessment forms and based on conversations with YOT staff) gives an indication as to the layers of support young people had or that were lacking.

In Pengaron, the non-breach cohort generally had a greater number of supportive relationships and experienced greater stability within those relationships than the breach cohort. In relation to family, four of the breach cohort had one family member who was described as supportive. This person was rarely a parent: examples were an uncle, and older sister, a grandmother, and one father. Of these four young people, only one appeared to have any supportive 'others' – in this case, the garage owner where he was undertaking an apprenticeship. One young person with a breach history who resided with his grandparents felt supported by them and was also in a long-term relationship with his girlfriend. Another young person was supported by both his parents and his younger siblings and had positive relationships with a teacher and friends in college. These friends were not involved in the criminal justice system. Two of the breach cohort appeared to have no significant support from any family member, nor from any other person.

As for the non-breach cohort in Pengaron, six of the eight were described as being supported by at least one parent and often a step-parent and siblings. Of these six, five were described as having friends outside the criminal justice system. Additionally, one had a supportive relationship with his football coach, and another with a school teacher and his girlfriend; another with his boxing coach and his girlfriend; and another just with his

girlfriend. The two young people in the non-breach cohort who were not supported by their parents were supported by either one or both grandparents. Additionally, one of these young people had been in a long-term relationship with his girlfriend and had a young child for whom he helped to care.

In Llanfadog, seven of the breach cohort were described as having an 'ongoing' relationship with at least one parent – most often their mother. However, it is important to bear in mind that four of these seven young people had also been accommodated by the local authority on several occasions either because their parent (usually mother) felt they could not cope with the young person's behaviour, or because there was domestic violence in the household (or both). Four of the breach cohort were also described as being 'supported' by their older brother(s), but these brothers were all involved in serious offending. Only three of those with a breach history were recorded as having any other 'positive', pro-social relationships: two had a young baby and had a good relationship with the mother of their child, and the other young person had a supportive relationship with his boxing coach and friends who were not in the YJS.

Six of the non-breach cohort in Llanfadog were recorded as having a 'positive' relationship with both parents. Of these six, four were described as having friends outside the criminal justice system. Three of the non-breach cohort had a supportive relationship with their employer; another with their education provider; and another young person was supported at his football club. One of the two non-breach cohort who did not have a relationship with either parent lived with, and was supported by, his grandparents; the other lived by himself, occasionally visiting his younger sister.

4.3.2.11 Hobbies and aspirations

In both YOTs, records of young people's hobbies and aspirations were sparse. Within the *AssetPlus* assessment, few of the young people's self-assessments and parents' assessments were fully completed and, in all but four cases, the section dedicated to hobbies and aspirations was left unanswered. It was not assumed that this was because the young people were not asked; many staff stated that it was very difficult to get an answer from most young people at their initial assessment (it is, after all, a rather 'forced' setting). Details such as these were more likely to transpire as the court order progressed and the young person's relationship with the YOT developed; and even though the *AssetPlus* form should be updated with each review of the orders, staff admitted that they did not always update every section.

That said, conversations with some staff also indicated that they believed some young people had no aspirations or interests other than committing crimes. The *interviews* undertaken with the young people appeared to support this view, with most of the young people struggling to state any interests other than 'chilling with my mates' and 'smoking [cannabis]'. However, the many casual conversations this researcher had with the young people revealed many more interests than were recorded in the files or divulged during interviews, though not many aspirations. The following information is based on that presented in the young people's case files as well as interview data and other informal interactions with young people and staff.

In Pengaron, five of the breach cohort revealed at least one interest. These included: rugby, playing x-box, spending time with friends in town, working with their hands and building things, boxing, animals, and computers. Only one young person volunteered an aspiration, which was to get full time work and earn money. As for the non-breach cohort, six revealed at least one interest. They included: art, mechanics, making things, football, rugby, biking, driving cars (illegally!), boxing, and cars more generally. Only two of the non-breach cohort were recorded as having any aspirations: both wanted to become a mechanic, and one also aspired to have a 'nice family'.

In Llanfadog, four of the breach cohort expressed an interest in something, including: boxing, biking, gardening, spending time with his child, and driving cars (again, illegally). The only two young people with a breach history who expressed any aspirations for the future stated that they simply wanted 'to be a good dad'. All eight of the non-breach cohort expressed an interest in something, including: art, drawing, school, computer games, spending time with friends, spending time on the phone, football, watching television, Playstation, spend time with family, computers, X-box, going on the internet, going on social media, and music. Three of the non-breach cohort had an aspiration for the future: one wanted to work full time; another wanted to become a mechanic; and the third wanted to become a plumber and run his own business.

This shows that, far from having 'no hobbies other than committing crimes', most young people had at least one interest which they pursued to some degree. However, while some young people in Pengaron thought that their Referral Orders supported them to pursue these interests (e.g. by facilitating their attendance at rugby training), they felt that this was not the case with other criminal justice orders. In Llanfadog, none of the young people thought that the YOT did anything to facilitate their hobbies (although some acknowledged that they did provide other opportunities – see Chapter 5, section 5.2.6).

4.4 Girls' case files (n=13)

To reiterate what was touched upon in the introduction to this chapter, while talking to the YOT staff and trying to seek an explanation for the under-representation of girls in the breach cohort, one particular theme kept recurring. This was that staff were less likely to breach girls for non-compliance with their orders because of a perception of greater welfare needs among the girls and lower levels of risk to the public. The girls' files were subsequently reviewed for information which might support or contradict this view. The main findings are summarised in this sub-section.

Analysis of case files showed that: a greater proportion of the girls were 'looked after' (CLA) compared to the boys – 10 out of 13 girls, or approximately 77 per cent, compared to 33 out of 93 boys, or approximately 35 per cent. However, the proportion of girls who were CLA was very similar to the proportion of boys who had a breach history who were CLA, the latter being approximately 74 per cent (14 out of 19 boys).

All but one of the girls were aged 16 years or older when the cross-section was taken (the other was aged 15 years), and the average time that had elapsed since their first YOT intervention (of any sort) was two years and two months. The average age at which they received their first YOT intervention was 14 years and 10 months. This is slightly later than the boys at both YOTs, whose age at first YOT intervention was on average 14 years and 2 months in Pengaron and 14 years in Llanfadog. On average, the girls had three YOT interventions on their record (including their current order). This is less than half of the boys' average in Pengaron (seven interventions), and fewer than the boys' average in Llanfadog (five interventions). Only two of the 13 girls had any previous criminal justice interventions on their records (a comparison cannot be made in this regard with the boys, since one of the criteria for the boys' case file selection was at least one previous criminal justice intervention). One of these two girls was on a standard YRO; the other on a YRO with ISS. The rest of the girls were on Referral Orders.

The offence history of the girls was generally much shorter than the boys': on average, the girls had eight offence convictions on their record. In comparison, the boys who had breached averaged 29 convictions while the boys with no breach history averaged 13. Naturally, with fewer offences, the girls also had fewer court appearances. On average, the girls had two court appearances on their record. This is far smaller than the averages for both cohorts of boys: 24 for those with a breach history and 12 for those with no breach history. In terms of the types of offences committed by the girls, the predominant offences were violence against the person and public order offences. The violence against the

person offences were all on the lower end of the scale (i.e. assault by beating, common assault, or assault occasioning actual bodily harm), and tended to be directed towards family members or carers. By contrast, many of the boys' assault convictions related to the wider public. However, the majority of both the boys' violence against the person offences were also on the lower end of the seriousness scale.

As with the boys, substance use was very common among the girls: nine of the 13 girls reported using drugs on at least a weekly basis, seven of them using daily, two of whom had a heroin addiction. Unlike the boys, however, heavy alcohol use was also commonplace, with eight of the girls described as frequently drinking large quantities of alcohol. For six of the girls, their case files recorded a direct link between their offences and substance misuse (i.e. they committed the majority of their offences while under the influence of substances). Only one of the girls was implicated in distribution offences and was convicted of possession with intent to supply.

The girls' case files recorded a higher prevalence of *diagnosed* mental health conditions: eight of the girls had a diagnosis of depression and / or anxiety, five were reported as having emotional difficulties especially in controlling their anger, and two had spent a period of months in a specialist mental health unit following traumatic incidents. Eight of the girls disclosed self-harming, and three of them were recorded as having attempted suicide. Specialist support tended to be intermittent – the same difficulties faced by the YOTs in securing CAMHS support for the boys appeared to apply equally to the girls, in particular the stringency with which the mental health team applied their 'missed appointments' policy.

Eleven of the girls were victims of domestic violence, a similarly high proportion to the boys in the breach cohort. Six of the girls were recorded as having lost one or more parent – two lost a parent to suicide, and the others' parent/s had such severe substance misuse issues that they were not allowed any contact with their children. Nine of the girls had spent time on a Child Protection Register, primarily due to neglect and/or abuse at home but also, in five cases, because of concerns that they were being sexually exploited. Pregnancy was commonplace too: six of the girls had been or were pregnant; three had experienced a miscarriage or stillbirth.

In terms of the girls' accommodation history, this was characterised by instability, similar to the boys in the breach cohort. On average, the girls had moved six times since their first involvement with the YOTs, with the 10 girls who were CLA averaging eight moves each. Only three of the girls were in some form of ETE – one in a local college, the others doing 5-15 hours per week in a local 'alternative education' provider. Only one was

recorded as having achieved one or more GCSE, and six of the girls had a history of exclusions from mainstream schools on their record. Unlike the boys, there was no record of any of the four girls who had attended special schools being excluded from those schools. Six of the girls had been diagnosed with some form of speech, language or communication difficulties, three of whom were also diagnosed with BESD (seven girls in total were identified as having BESD).

Generally, the girls appeared to have more supportive relationships with family members than the boys, especially the boys who had breached. Grandparents were frequently recorded as being 'supportive' (in five cases), and the girls' files often recorded good relationships with siblings (in seven cases). In common with the boys, however, the girls' records stated that they had few pro-social friendships (in seven cases). Hobbies and/or aspirations were only identified in four of the girls' case files – all in Pengaron.

This overview of the girls' case files suggests that while their welfare needs were indeed great, they were similar to those experienced by the 'breach cohort' of boys. The biggest difference between the 'breach cohort' and the girls was in relation to the volume of offence convictions, with the former averaging 29 (average across both YOTs) and the latter averaging eight. Insofar as frequency of offending affected their scoring on 'risk of harm to the public', it could be argued that the girls did present a lesser risk of harm.

However, the types of offences should also be taken into consideration. In Pengaron, the most common offence type among the breach cohort was theft. By contrast, the girls' (and the breach cohort in Llanfadog) most common offence type was violence against the person. Even though this violence was 'lower level', it surely does not constitute a lesser risk of harm to the public than theft. That said, more of the boys in both YOTs' breach cohorts had one or more 'higher level' violence against the person offences on their records compared to the girls: two boys in Pengaron and four in Llanfadog, compared to only one of the girls. Crudely, then, it could be argued that the boys were more likely than the girls to commit offences which presented a greater risk of harm to the public. Alternatively, this just shows that 'risk scores' are a poor predictor of future behaviour, since many of the boys' more serious offences were 'one offs' and/or succeeded by the commission of lower-level offences.

4.5 Conclusion

A few incontrovertible statements can be made based on the information presented in this chapter. First, a disproportionate number of the breach cohort in both YOTs were male –

100 per cent. Second, they tended to be older when convicted of BCJO offences – mostly 15 years or older. This suggests either a higher degree of compliance among younger children, or a greater tendency by YOT staff to instigate breach proceedings the longer the children are involved with the YOT and/or the older they are. Third, compared to their non-breach counterparts, they were much more likely to be, or have been, 'looked after'. 'Looked after' status was often accompanied by significant instability of accommodation. Given the much higher proportion of the breach cohort who were 'looked after' compared to the non-breach cohort, it is unsurprising that the 'breach cohort' were more likely than the 'non-breach cohort' to experience significant instability of accommodation.

The data also reveal that the breach cohort in both YOTs tended to have twice as many criminal justice orders on their record than the non-breach cohort. While this fact is, in itself, unremarkable (especially considering that those with a breach history had on average twice as many offences on their records), when placed in the context of the young people's offence types and pre-court interventions, it becomes more significant. The majority of the offences committed by the breach cohort and the non-breach cohort – theft, criminal damage, public order offences, possession of drugs (small quantities) and low-level assaults – fell into the offence gravity bracket of one to three in the gravity matrix provided by the Association of Chief Police Officers. According to this matrix, offences with a gravity score of one should "always [receive] the minimum response applicable to the individual offender, i.e. Community Resolution or caution, youth conditional caution or charge" while offences with a gravity score of two or three should "normally [receive] a youth caution. If the offending behaviour cannot be satisfactorily addressed by a caution consider Youth Conditional Caution..." (ACPO, 2013: para. 15).

The fact that in Pengaron, the breach cohort had on average just one pre-court intervention, and that in Llanfadog, both the breach and non-breach cohorts had on average less than one pre-court intervention suggests that pre-court processes are not being used as much as they ought to be. In other words, diversion from the formal criminal justice system, which was identified in Chapter 1 as an essential strategy for the 'children first' principle of 'doing no harm', is not being practised maximally. It suggests that the *volume* of offences, as well as their severity, is a significant influence on the decision to divert or prosecute.

Another significant concern which is related to this is the frequency with which young people attended court. The damaging consequences of formal contact with the youth justice system have been well-established (see chapters 1 and 2), yet young people in both cohorts often had many more court appearances than offences on their records, with those

who had breached likely to have on average between twice and four times as many court appearances on their records than their non-breach counterparts.

As for the lives of the young people beyond their involvement in the YJS, very few conclusive statements can be made. Nonetheless, the data presented do suggest two things: first, children on criminal justice orders *in general* had experienced significant violations of their basic 'welfare' rights as well as deprivation of their 'entitlements' (under the Welsh Government); and second, those with a breach history were more likely to experience a greater combination of these adversities and disadvantages than the non-breach cohort. These findings corroborate those of Hart's (2011) and Grandi and Adler's (2016) studies. This questions the extent to which the 'best interests' and 'service accountability' principles of 'children first' (see Chapter 1, section 1.4) are practised.

YOT workers often cited 'greater welfare needs' and 'lower risk' as reasons for being more cautious about breaching girls. These data suggest that the welfare needs of the girls are indeed great, but so are those of the majority of boys with a breach history and some of those with no breach history. As for 'risk', girls on average had far fewer offences on their records than the average for the breach cohort, and the offences usually targeted family members or carers. The predominant offence types of the boys, on the other hand, more frequently victimised members of the wider public. Based on their respective offence histories, the boys could be crudely construed as presenting a greater 'risk' to the public than the girls. However, as discussed in Chapter 2 (section 2.3.3), trying to predict behaviour based on perceived 'risk' is not at all straightforward. Bearing in mind the lower breach rates in both YOTs for Referral Orders compared to any other criminal justice order, it may be the case that the girls' lack of BCJO convictions reflects the orders which they were serving (11 out of 13 on Referral Orders). Another factor could be the number of criminal justice orders they had: for 11 of the girls, the Referral Order they were currently on was their first criminal justice order. They therefore may have simply had less opportunity for non-compliance than the boys.

However, even if it is accepted that the boys generally presented a greater 'risk' to the public, the question which must be answered is what impact does instigating breach proceedings have on their level of risk? Unless the intention and certain outcome of instigating breach proceedings is the imposition of a custodial sentence (therefore temporarily removing the young person and their associated 'risk' from the public), how does breaching a young person affect the risk posed by them to the public? If YOT staff justify their breach decision-making in part on their perception of risk the young person presents to the public, then one would expect there to be some benefit (i.e. risk reduction)

to breaching a young person. In the absence of such an outcome, in addition to being contradictory to the 'children first' core principle of always acting in the best interests of the child, the justification makes little pragmatic sense. This discussion is continued in Chapter 6 (section 6.2.3).

Before moving on to the next chapter, a few other questions which emerge from the data presented in this chapter ought to be highlighted. The data suggest that Pengaron has a higher breach rate than Llanfadog; that YROs with ISS in both YOTs are (proportionally) most frequently breached; and that more than any other order, breaches of Referral Orders are likely to result in a revocation and resentencing. The data presented thus far do not, however, offer any reasons for these findings. Why does Pengaron appear to have a higher breach rate than Llanfadog? Why do more young people in Pengaron breach an order for a second, third or fourth time? Do the young people in Llanfadog tend to comply with their order after a first breach? Or is the court in Llanfadog less likely to give the young people a second chance on their current order, preferring instead to revoke the order and impose a new one? If the difference is between sentencing practice, what influence does the YOTs' breach reports have on the sentence? On what basis do the report authors decide on their recommendations? Is the young person involved in the breach process prior to going to court? Are their views heard and taken into account in court? These, and other questions, are addressed in the next three chapters.

Chapter 5: Young people's (non)compliance with criminal justice orders

5.0 Introduction

The purpose of this chapter is twofold. First, the factors affecting young people's (non)compliance which *they* identified are discussed. While the previous chapter identified a range of personal, criminal justice, and socio-structural factors which may be reasonably assumed to have an impact on their ability to comply, this study placed a substantial emphasis on hearing from the young people themselves. (The views of the YOT staff, Referral Order Panels volunteers, and magistrates are discussed in the next chapter, in connection with the analysis of their breach decision-making.) Conversations and interviews with the young people (and analysis of their case files) did indeed indicate that their compliance was affected by a range of unaddressed / insufficiently addressed barriers which they had to navigate daily. However, their reasons for non-compliance also included a belief that the specific requirements of their orders, as well as the people responsible for imposing and/or implementing/supervising their orders, lacked legitimacy.

The second purpose of this chapter is to identify some of the ways in which YOTs promoted young people's compliance and/or engagement. It would be misleading to give the impression that once children started their orders, they were expected to just 'get on with it' without any support. To the contrary, various actions were taken by staff in both YOTs to encourage and facilitate children's formal compliance and engagement – or re-engagement – with their orders. The discussion touches on the fact that the extent to which these various mechanisms, or 'tactics', were used, differed according to individual practitioners' beliefs about childhood and the causes of youth crime.

The chapter is structured as follows: section 5.1 contextualises non-compliance by providing an overview of the various forms that it took in both YOTs. It notes that non-compliance was commonplace across most criminal justice orders, not only by those young people who were breached. Section 5.2 explores the reasons given by the children involved in this study for their failures to comply, as well as what, if anything, increased their likelihood of engaging with their orders. The actions taken by YOTs to promote compliance/engagement are presented in section 5.3. Section 5.4 concludes the chapter by reflecting on the reasons for children's non-compliance, and on the legitimacy of breach as a response to non-compliance arising from these reasons, in light of the overarching aim and principles of 'children first' identified in Chapter 1. It also reflects on the actions which were taken by practitioners (to a greater or lesser degree) to promote compliance,

suggesting that they may not be sufficient to enable children to fully *engage* with their orders (achieve substantive compliance), even if they do improve their formal compliance with YOTs (see also discussion in Chapter 2, section 2.2.1).

5.1 Forms and prevalence of non-compliance

There were various ways in which young people could fail to comply with their orders. This sub-section provides an overview of all the various types of non-compliance and identifies the most and least prevalent forms in both YOTs. At this juncture, it is important to reiterate that case managers must judge every instance of non-compliance as 'un/acceptable' after it occurs. The purpose of this section is not to explore the reasons for such judgements (this is dealt with in Chapter 6). Rather, it presents a picture of the kind of behaviour and actions (or inaction) which had the potential to propel the children towards breach proceedings.

The table below lists every form of non-compliance (regardless of adjudication as 'un/acceptable') identified in the 'contacts' records of the 32 children whose case files were analysed in-depth. Further data sources included breach reports and formal warning letters. In total, 76 criminal justice orders were combed for instances of non-compliance.[81]

[81] These included all of the criminal justice orders listed on the 32 children's interventions history, excluding the orders which were active at the time – a total of 76 separate orders (38 in each YOT).

Table 8. Forms of non-compliance with criminal justice orders

Forms of non-compliance
Failure to attend statutory appointment, including: supervision, reparation, other specified activity, Referral Order panels, YRO review panels (Pengaron only), compliance panels (Pengaron only), breach panels (Llanfadog only), Attendance Centre (Llanfadog only), or education (ISS requirement only).
Poor behaviour during statutory appointment (including turning up under the influence of substances and/or being verbally aggressive or threatening during appointments).
Turning up late to an appointment.
Violation of curfew (multiple minor: accumulation of two hours or more).
Violation of curfew (major: two hours or more).
Failure to reside at address specified on DTO licence conditions.
Deliberate tampering / removal of Electronic Monitoring Equipment (tag).
Failure / refusal to agree to and sign a Referral Order contract at the Initial Panel.

Across these 76 orders, 495 instances of non-compliance were identified (257 in Pengaron and 238 in Llanfadog). The most common form of non-compliance in both YOTs was failure to attend a supervision session: this accounted for 121 instances of non-compliance in Pengaron and in 88 in Llanfadog. This was unsurprising for two reasons: first, supervision was a statutory requirement common to all the orders, and second, the majority of the young people had to attend more supervision sessions than any other type of session. Therefore, there was a greater opportunity to fail to comply with the supervision element of the orders. However, as is discussed in section 5.2, there were other reasons why some young people were less likely to attend supervision sessions than other types of sessions, such as disliking the content of supervision sessions, and a tendency to have a better relationship with the staff delivering the other aspects of their orders.

The next most common form of non-compliance was a curfew violation: there were 53 curfew violations (including both major and accumulation of minor violations) in Pengaron and 47 in Llanfadog. This is significant because only 35 of the 76 orders which were reviewed – approximately 46 per cent – had a curfew requirement. Of the 14 young people who were subjected to a curfew in one or more of their orders, only three of them fully complied with it.

Failure to attend education was the form of non-compliance which was recorded least often. Even though education was a statutory requirement in all eight YROs with ISS

in Pengaron and all nine in Llanfadog (as a core element of the ISS intervention), failure to attend education was recorded only five times across two orders (two young people, both in Llanfadog). Rather than attend the YOT every day the magistrates had permitted (ordered) them to attend college / a work placement instead, so it was this requirement that became enforceable. However, the education element of ISS was delivered 'in house' by the YOT for most young people, and when recording children's attendance in their case files, staff often did not differentiate between the different aspects of the ISS. It is possible therefore that some of the 'failures to attend supervision' were, in fact, failures to attend education.

Failures to attend reparation sessions (either as part of a YRO 'activity requirement', or as part of a Referral Orders 'contract') were more prevalent in Llanfadog than in Pengaron. In Llanfadog, there were 39 failures to attend reparation found across 22 criminal justice orders where reparation was a statutory requirement. In Pengaron, 19 instances were found across 25 orders. This may have reflected the different approaches taken by both YOTs with reparation (see discussion in section 5.2).

Although there were more instances of 'poor behaviour' recorded in Pengaron than Llanfadog (11 instances compared to 5), Llanfadog was more likely to record these occurrences as 'unacceptable'. All five instances of 'poor behaviour' in Llanfadog were recorded as 'unacceptable' compared to only three in Pengaron. Both YOTs had a similar number of incidents of poor timekeeping ('being late') recorded in the case files (seven instances in Pengaron and six in Llanfadog); in Pengaron, only one of these was recorded as 'unacceptable' while in Llanfadog four were recorded as 'unacceptable'.

5.2 Young people's reasons for non-compliance, and factors promoting engagement

Six overarching themes for factors affecting children's compliance and/or engagement were identified when analysing the interview data and notes from the research log[82]: the content of the statutory sessions; the nature (length and requirements) of the order itself; the young people's perceived legitimacy of the Referral Order Panel; communication and participation during formal proceedings; the quality of young people's relationships with different YOT workers; and the opportunities provided by the YOT. All the young people quoted in this thesis have been given pseudonyms.

[82] These notes were made following informal interactions with the young people.

5.2.1 The content of statutory YOT sessions – 'pointless', 'boring', and/or unhelpful

Each of the 10 young people who were interviewed (four from Pengaron, six from Llanfadog) had to attend supervision sessions, normally with their case manager. Additionally, they had to attend one or more of the following: reparation, unpaid work, or education (as part of an ISS requirement). Eight also attended sessions with a YOT substance misuse worker and/or the health worker, but these sessions were not statutory. When asked what they liked, or thought was good, about their orders, most of the young people (seven out of 10) had nothing positive to say about the content of any of the statutory sessions, while the remaining three (all from Pengaron) expressed favourable views towards reparation sessions. All ten young people disliked the content of at least some supervision sessions, stating that:

> *"They just gets you to talk about your offences init… it's booooring"*
>
> Jake, Llanfadog

> *"He [case manager] keeps bangin on about the future, like, what am I gonna do in the future now I'm seventeen… I just switch off like."*
>
> Chris, Pengaron

While it was evident that some of the young people would usually tolerate these sessions, others could not. As with Harry, when discussing his recent warning for walking out of a supervision session:

> *"I aint fuckin talkin' 'bout my offences to him [case manager]… I just said to him "I already done tha' in court and I aint doin' it again and no I aint fuckin sorry""*
>
> Harry, Llanfadog

It was striking to realise how frequently the young people were made to discuss their offence(s). At minimum, for each episode of offending, they would have to discuss it during a PSR interview (if a PSR was required); in court (often multiple hearings); in the initial Panel at the YOT (for those who were sentenced to a Referral Order); and then again during supervision sessions with their case manager. Some of the young people expressed feeling defined by their offences. While they openly acknowledged that they did commit

many offences, they did not think it was fair that they had to explain multiple times to multiple people why they committed the offences:

> *"I aint bad, init, I knows I'm a little shit, but they [court and YOT] talks to me like I'm some fuckin gangster"*
>
> Franklin, Llanfadog

Those who spoke positively about the reparation sessions (three young people in Pengaron) primarily emphasised the quality of the relationship they had with the reparation workers (see section 5.2.5). However, they also reported that they enjoyed the activities, or the work, that they were doing during those sessions. These included things like painting schools; working at allotments; carpentry activities; building flower beds; and helping to create or build items for local festivals or community centres. One young person, referring to the flower bed he had built for his grandmother as a way of apologising for his behaviour, stated that:

> *"I was well proud o' that… yeah, so* proud*. And you shoulda seen the look on my grans face! … She didn't* believe *it…!"*
>
> Dafydd, Pengaron

By contrast, when asked about reparation sessions in Llanfadog (four of the six young people had to attend reparation sessions), their responses were uniformly negative. Litter picking was commonly used as a 'reparation' activity, and while two had been taken to fix bikes as part of their reparation work, and all four had done some work at an allotment, they all reported that they did not enjoy any of these sessions and that there was a lot of 'hanging around'. Unlike Pengaron, there were no designated 'reparation workers' in Llanfadog, so the case manager would often be responsible for undertaking reparation work with the young people as well as the supervision sessions. Some of the young people who were interviewed did not get on very well with their case managers (see section 5.2.5), so it is possible that the underlying relational dynamics in Llanfadog contributed to some of the young people's dislike of the sessions. This is in addition to the stigma they perceived from going out to pick litter:

"It's embarrassing, like. There's no waaaay I'm goin' anywhere near [the area in which the young person lived] doin' this… I told [case manager] straight up, no chance I'm doin' that here"

Jake, Llanfadog

Given this, it is perhaps unsurprising that the breach rate for Referral Orders, where reparation is mandatory, was approximately twice as high in Llanfadog compared to Pengaron (see Chapter 4, section 4.2.3).

5.2.2 The order itself – specific statutory requirements and length

While the way in which the supervision sessions were delivered (their content) was problematic for some of the young people, the requirement itself (i.e. 'supervision requirement') was not identified as a problem. There were, however, two specific requirements which were intrinsically problematic for some of the young people on YROs: the electronically-monitored curfew; and the Intensive Supervision and Surveillance (ISS) requirement. Moreover, the length of YROs presented a barrier to some young people's (perceived) ability to comply, such that some of them expressed a strong preference for going to custody.

5.2.2.1 Electronically-monitored curfew (EMC) requirement

Six of the young people who were interviewed were subject to an EMC at the time, and a further two had been subject to one on previous orders. One of the latter two, and one of the six who were currently subject to an EMC, stated that they found the curfew helpful because it gave them a reason not to 'hang out' with their friends (whom they considered to be the instigators of their offending behaviour). The other six, however, were adamant that they 'hated' it. They saw it as a straightforwardly punitive and 'unfair' requirement, which prevented them from seeing their friends and, in some cases, forced them to stay inside a home (familial or local authority) in tense and/or volatile circumstances.

"They just wanna make me realise, like, I done summin wrong, so I gotta pay for it… so they're gonna stop me seein' all my mates and tha'…"

Gabriel, Llanfadog

"There was this one time… I was staying in this shitty B&B cos that's where Social [Children's Services] put me… I'm tellin you it was full of crackheads and tha'… I told 'em [the Electronic Monitoring Company who came to fit his tag] 'there aint no way I'm stayin here from 8-8', and anyway, as soon as they went I got up and ripped off my tag"

Blayne, Pengaron

Blayne, from Pengaron, summed up why he thought the EMC was a form of punishment with no other purpose:

"It don't even make sense, like… if I was going out on the town, like, terrorisin' people at night and shit and doin' burglaries, I'd get it… but my offences got nothin' to do with tha'…"

While Blayne was, at the time of the interview, about to finish a standard YRO with no curfew attached, the offences which previously led him be sentenced to a YRO with ISS (which includes an electronically-monitored curfew) were three common assaults, possession of cannabis (personal quantities), and three breach of statutory order (YRO) offences. It appears that the ISS requirement (a 'direct alternative to custody') was imposed because of his three breach offences for standard YROs.

Three of the young people offered a hypothetical compromise – stating that maybe if the duration of the curfew was / had been a little shorter (e.g. from 10pm until 6am, rather than 8pm until 7am, which was the norm), then they might be more willing / able to comply – "cos I'd just go sleep then" (Franklin, Llanfadog). This suggested that they were not unwilling to comply with a curfew; rather, they thought that its length was unwarranted, preventing them from 'hanging out' with friends, and making them feel as if they were being treated like little children.

Perhaps the most notable difference between the two young people who viewed the EMC as helpful and the six who did not, was that the former lived (and had always lived) with their parents in their family home (they had no 'looked-after' history, nor any recorded accommodation difficulties). Although none of the young people were asked about their living situations, their case files showed that all of the six young people who stated that the EMC was problematic has spent time in and out of care – and in and out of several different residences.

5.2.2.2 Intensive Supervision and Surveillance (ISS) requirement

The two young people who were on a YRO with ISS at the time of their interview had their liberty curtailed in two regards – at evening/night via a curfew, but also during the day. Both were on a YRO with a 'Band 1' ISS requirement, which, at the time, demanded 25 hours per week at the YOT from the young person. Both young people had already breached their order once (but had been given another chance by the court to comply). When discussing the circumstances of the breach, one stated:

> *"it's [the order] just shit… I gotta come to YOS all day then I got like two hours before I gotta be in [for his curfew]… My mates are all like 'come on, don't be a pussy, you gotta come out'… so eventually, yeah, I was like 'fuck it!' And I just didn't turn up to YOS… I missed two whole curfews"*
>
> Harry, Llanfadog

The other young person simply did not believe that he could manage the intensity of the order:

> *"There's just no way I'm gonna do this… I thought he [YOT case manager] was takin' the piss when he said I gotta come here every day for 5 hours… I didn't hear 'em say tha' in court! Nah, honestly… just send me to prison instead… I'd rather do time"*
>
> Aaron, Pengaron

While this clearly raises an issue around 'setting children up to fail' by imposing orders which are (or which the children perceive to be) too demanding, it raises another issue too – one of communication and understanding. Even though both young people had 'consented' to the ISS plan prior to its recommendation by the YOT to the court as a sentencing option (as is required by law), they clearly had not fully understood its implications. This is further discussed in section 5.2.4.

5.2.2.3 Length of YRO

Aaron (above) was not the only young person to express a preference for a custodial sentence. Two of the young people who were on 18-month standard YROs stated that they, too, would prefer to go to custody rather than do the YRO. This was because they did not think they could comply with the order for such a long time. A 'short stint' in custody – the maximum custodial sentence for a breach offence is a 4-month DTO (which means 2 months in custody, and two in the community), or, if the breach is of a DTO licence, a maximum of 3 more months in custody – seemed much more preferable and manageable.

5.2.3 Perceived legitimacy of the authority of Referral Order Panel members

One of the three young people who were on a Referral Order, and three of the young people who had previously breached a Referral Order, questioned the legitimacy of the Panel members in deciding on the requirements to include in the 'contract'. Two of the young people (Llanfadog) who had previously been subject to a Referral Order recalled being unhappy about being 'forced' to write a letter of 'apology' to the victim of his offence (in Pengaron, this was called a letter of 'explanation'), stating that the Panel had 'no idea' what they were talking about:

> *"I just didn't do it. I didn't do whatever they told me. I remember I just walked out then. They were goin' on and on about 'why d'you do this', 'why d'you do that', and I remember I was quiet for a while… then they told me I'm gonna write a letter to apologise… that was it then… I was out the door"*
>
> Ianto, Llanfadog

Dafydd (from Pengaron), who had recently breached a Referral Order, stated:

> *"who the fuck to they think they are, tellin' me I gotta do this and that… they're just nobodies, nosy as fuck… they aint got no power, it's the court that has to tell me what I do"*
>
> Dafydd, Pengaron

Clearly, these young people questioned the authority of the Referral Order Panel and cited this as a reason for not complying with their Referral Orders. However, they also raised a

more fundamental issue relating to the nature of the young people's *participation* in the process. The Referral Order 'contract' is supposed to be 'co-produced' by the Panel and the young person, with input and advice from the case manager. The comments made by the young people suggested that this did not happen. The observations made of Referral Order Panels in the YOTs corroborated this. These are discussed in the following subsection (5.2.4).

5.2.4 (Lack of) communication and meaningful participation

Although none of the young people explicitly stated that their compliance was affected by a lack of understanding of the order, or by a lack of participation in the process, several comments made by young people during interviews suggested that this had a part to play (see e.g. quotations Aaron on ISS, Ianto and Dafydd on Referral Orders). Although it was not possible to observe the court hearings and/or Referral Order Panels which were applicable to the young people who were interviewed (the participant selection process meant that these had already occurred when the young people were interviewed), several observations were undertaken of court hearings and Referral Order panels which assessed how children's participation was promoted, hindered, and/or actively discouraged in the proceedings. Moreover, the forms children had to sign immediately after sentencing hearings, and the 'contract' forms for Referral Orders, were textually analysed. Fuller documentation and analysis of the observations were made; here, a summary is provided.

5.2.4.1 Court proceedings

Court hearings were overwhelmingly authoritarian and not at all conducive to the meaningful participation of children (or their parents), despite the raft of guidance and protocols for magistrates which emphasises the importance of engagement (see Chapter 2, section 2.4.1). The often intimidating and sometimes confrontational atmosphere observed – and felt – by this researcher was reinforced by many of the young people's interview responses when asked about their experiences in court:

> *"I was brickin it… I thought it would be a bit of a laugh cos I got mates who been in there init, an' then they had all these people in there lookin' at me all weird like… I didn't say nothin, just kept sayin' "yes sir, no sir" cos that's what they [YOT worker] told me"*

Euan, Llanfadog

"It's shit in there [court]. They keeps shoutin at me an' I'm like "calm down mate" but then they get even more pissed off"

Ianto, Llanfadog

"First time was – I went there in a suit and tie. Now I'll just go in my tracksuit like… Every *time I go court I'm like, fuck, fuuuuck, what's gonna happen now… [Now] I laugh at them. I play up in court, I just* laugh *at them"*

Aaron, Pengaron

Young people were often 'spoken down to' – literally, as well as metaphorically. The bench behind which the magistrates were sat was always raised; and there was a great distance between the young people and the magistrates. The following quotations illustrate some of the patronising language that was aimed at the young people by one particular magistrate:

Chair: "the thing is, you may not like the YOS, but you'll like probation even less… You've got a problem, [name of YP]. And I have to tell you that we all have to do things we don't want to do".

"Young man, what you have to realise is actions have consequences… you're not unintelligent".

Court Observation 1, Pengaron

In terms of the young people's understanding of the proceedings (and outcomes), most of those who were interviewed stated that they 'knew what was going on' in court. However, the previous comments suggest that while they may have realised why they were going (back) to court and that there were certain formalities they had to go through while in the courtroom, they did not necessarily understand the proceedings and / or the outcomes. The court observations reinforced this suggestion, not least due to the excessive use of jargonistic and legal language without an accompanying explanation for the young person and their parent / guardian.

5.2.4.2 Documents signed at court

There was a stark contrast between both YOTs in the style and accessibility of the 'agreement forms' the child and young person had to sign immediately after the conclusion of sentencing hearings. In Pengaron, children were required to sign a form entitled "Your Court Order". This described the requirements of the order; the expectations of the YOT in terms of timekeeping, good behaviour, and keeping appointments; the responsibilities of the YOT to the child; and the possible consequences of non-compliance. It also contained information about making complaints if the child and/or his parent is dissatisfied with the YOT. The form was easy to read, using picture icons alongside brief sentences to explain the responsibilities of all parties. The language used was mostly simple and clear, avoiding jargon and references to technical / legal procedures. Some of the possible consequences of failing to comply with the order were made explicit in simple terms – "prison or a fine" – further highlighted by the use of red text.

The forms in Llanfadog were completely different. The language was technical; the YOT's responsibilities to the child were not mentioned; and there was a heavy emphasis on the consequences of non-compliance. Expectations around timekeeping were not mentioned; and the only reference to 'behaviour' was presented in a 'threatening' context: *"We [the YOT] will not work with you if you behave in an unacceptable manner, including making racist, sexist or homophobic remarks."* Putting the absurdity of this statement aside (prejudiced or hateful beliefs or behaviours are surely something to be constructively challenged as part of the YOT's engagement with the young person, not used as an excuse for the YOT not to engage), furthermore, no visual aids were employed, and the sentences were far too long. In sum, these forms could not be described as 'child-friendly' by any stretch of the imagination.

5.2.4.3 Referral Order Panel – engagement in the process

Seven Referral Order panels were observed in Pengaron, and four in Llanfadog. Four of the seven in Pengaron, and three of the four in Llanfadog were "initial panels" where the so-called 'contract' should be developed; the rest were "review panels", convened every two to three months after the initial panel (see discussion of review panels in section 5.3.7). As with the court hearings, children's engagement in all of the panels was minimal and/or of poor quality. In each of the initial panels, the emphasis was always the young people's

offence(s). They were asked to recount the details of the offence(s), and then consider how their actions had affected both the direct and 'indirect' victims. In three of these initial panels (two in Llanfadog and one in Pengaron), they were cross-examined by the Chair of the panel about the details of their offence(s). One young person, who clearly was embarrassed about his offence and did not want to talk about it again was told by the Chair:

> *"I know you don't want to talk about it but you have to. I'm in charge here and I have to talk to you about your offending behaviour."*

Informed by the case manager that the young person had already been through the details of the offence at court and with her in their pre-panel meeting, and that he did not like talking about it as he felt ashamed, the Chair said to the child:

> *"Well, we* are *here to talk about your offence, but your case manager has made it clear that you feel ashamed, so that's good. You won't be doing it again then, will you?"*

The power imbalance illustrated here was perceptible in all the panels, albeit to varying degrees. This contributed to an atmosphere that was awkward at best, oppressive at worst. Often, the YOT case managers were crucial in advocating for the young people in the face of confrontation from the Chair of the panels. In one case, the young person had become agitated as a result of being pressured to talk about the impact of his offence on the victims, stating that he'd already talked about it in court and questioning why he had to do it again. The unsatisfactory response he got from the Chair – "we have to talk about it, otherwise we'll have to send you back to court" – made him angry, at which point he swore at the Chair and said "well send me back to fucking court then!" and left the room. The Chair would have referred the young person back to court for a breach hearing were it not for the case manager's intervention: while the young person was outside, she explained to the panel that the young person was not in a good frame of mind as his accommodation placement had just broken down, and that it would damage the YOT's fragile relationship with the young person if he were to be sent back to court. The Chair agreed to move on to compile the contract but demanded an apology from the young person. Fortunately, the case manager was able to persuade the young person to apologise for swearing, and the

panel proceeded to compile the contract. However, he was subdued for the rest of the meeting, certainly not engaged.

Three of the case managers in Pengaron and one in Llanfadog expressed their dissatisfaction with the Referral Order Panels, stating that for some young people, going through that process was more traumatic than going to court. While acknowledging that some of the panel members were well-intentioned, they thought that there were too many panel members who did not share their child-friendly ethos and who did more harm than good.

Although some effort was made by the panel members in both YOTs (usually the member who was not chairing) to talk to the young person about their interests, this was done in such a forced and formal way that the young people simply did not engage. The young people seemed very apt at recognising a person who was genuinely interested in talking to them, and those who were simply undertaking a formality or trying to break a silence.

5.2.4.4 Referral Order Panel – compiling the 'contract'

The statutory guidance on Referral Orders contracts reads as follows:

> "[the contract should be developed] through a process of 'co-production' with the child… The child should be helped to identify what they consider they can do to repair the harm that they have caused and what help they need to live a positive and productive life. Ideally these ideas will come primarily from the child, but volunteer panel members are also encouraged to suggest ideas for inclusion in contracts. Such ideas should draw upon the child's strengths and be mindful of any barriers to success, including physical barriers such as transport links." (MoJ and YJB, 2018:21).

It ought to be clear from the discussion in the previous subsection that the atmosphere in these panel meetings and the domination of the topic of the offence(s) presented a significant barrier to the active participation of the child in the compilation of the contract. It was indeed the case that in all seven initial panels, the young people's involvement in the compilation of the contracts was minimal and superficial.

However, in Llanfadog, even if the atmosphere had been positive and the emphasis of the discussion on the young person's strengths and needs, the active and meaningful

participation of the young person in compiling the contract would still be very difficult to achieve. This was because the generic contract form was a 'tick list' of pre-determined sessions which the young person had no choice but agree to; and a further list of optional "specialised" interventions which the Chair of the panel was supposed to discuss with the young person and then decide whether they were appropriate. The contract then went on to re-state that the young person will keep all appointments with the YOT; that the young person must inform their case manager immediately if they are unable to keep an appointment; and that if the young person fails to comply with any part of the agreement "either by not keeping agreed appointments or because of your behaviour during appointments", they will be referred back to the panel who could return them to court for re-sentencing.

The template contained very little scope for the active involvement of the young person in the process of compiling the contract. In the four panels this researcher observed in Llanfadog, the panel members' attempts to involve the young person in the compiling of the contract were limited to the following:

- telling the young person that they thought it would be a good idea for them to do x, y and z, then asking the young person if they agreed (to which the young people invariably either shrugged their shoulders and/or said 'dunno' / 'I don't care' and/or said 'yeah');
- asking the young people if there's anything they think would be helpful (to which the young people invariably said 'dunno' or 'no'); and
- telling the young person how many hours of reparation they think would be appropriate for them to do, and asking the young people if they thought this was fair (to which the young people would give one of the responses already mentioned).

In Pengaron, by contrast, the generic 'contract' had much more scope to positively and actively involve the child. Rather than listing pre-determined tasks which the panel members then ticked, the contract form in Pengaron contained five "Key things to work on" which included, in the following order:

1. To achieve my goals
2. To stop offending
3. To avoid hurting others

4. To keep myself safe[83]
5. To make up for what I've done

For each of these five areas, following sub-headings had to be addressed in the Panel meeting:

a) My target is…
b) To do this I will…
c) Parent / Carer action: To help you I will…
d) YOT Action: To help you we will…
e) How will we know I am successful / doing well?

There was also a 'progress' section for each goal which would then be filled in when the panel met again with the young person to review their progress. The contract then set out the minimum number of statutory contacts the young person was required to attend during the first three months of the order; explained that the order (if more than 3 months) would be reviewed every three months; and stated that if needed, the young person (with the YOT) could go back to the panel to change the contract. Finally, the contract clarified the circumstances under which the young person could be returned to court.

By designing the contract in this way, the Panel was required to have a discussion with the young person to identify what their personal goals were as well as how they might avoid reoffending. Moreover, the YOT had to commit to helping the young person to achieve these goals. By including the YOT's actions in the contract, the panel could hold the YOT to account if they had not performed their duties. While much of the content of most contracts was, in fact, quite generic – e.g. reparation hours, write a letter of apology (if appropriate), undertake 'offending behaviour' work with the case manager, attend substance misuse sessions (if appropriate) – there was also scope for incorporating the young person's interests into the contract. While it is not possible to say with certainty that the way in which the contract was formulated had an impact on children's likelihood to comply, the fact that only approximately 7 per cent of Referral Orders in Pengaron were breached compared to 11.4 – 16.3 per cent in Llanfadog (see Chapter 4, section 4.2.3) suggests that this might be one factor which increased their likelihood of compliance.

[83] This arguably should not have been included, since it implies that it is a child's responsibility to keep him/herself safe, rather than a fundamental right of theirs which ought to be ensured by adults. That said, the adjacent columns did specify 'parent/carer' actions and YOT actions for the purpose of achieving this.

5.2.5 Quality of relationship with different YOT workers

Despite the negative attitudes the young people had towards (some of) the content of their supervision sessions, this did not always reflect their opinion of their supervisor (case manager). Franklin, for example, disliked most of the supervision sessions but thought that his case manager was "sound" and was committed to trying to help him get a job. His attitude towards the order was:

> *"You just gotta get it done init. Just sit through it like… There's youngers here who mess around and shit… just grow the fuck up like. Get it done then get on with other t'ings."*
>
> Franklin, Llanfadog

For the most part, the young people did not say very much about their relationship with their case manager during the interviews. Two of the young people, however (one in each YOT), were adamant about their dislike of their case managers. Chris, who was one of the boys in Pengaron who said that he liked attending reparation sessions, felt that his case manager was spying on him and trying to catch him committing an offence:

> *"… he's out to get me… actin' like the police, takin' photos of me drivin' a car and that…"*
>
> Chris, Pengaron

By contrast, he spoke highly of the reparation workers, stating that:

> *"They talk to me like I'm normal."*

All of the boys in Pengaron had high opinions of the reparation workers. In Llanfadog, there was no dedicated reparation worker in post during the data collection phase; as such, any reparative work tended to be done on a one-to-one basis with the young people's case manager or, sometimes, with another worker from the YOT.

The interactions between reparation staff and the young people were observed while participating in reparation sessions in Pengaron. The following excerpt is taken from the research log. Some details have necessarily been left out to preserve the anonymity of the YOT.

"Task today was to paint [specific objects]. Four young people came along, I was introduced, everybody was chatting, having a drink and some food (provided by YOT) and atmosphere was calm. There were three staff – all of them speaking to the young people. Asking how their week had been, what they're up to, questions about their accommodation, families, girlfriends… The workers here seem to know everything that's going on with the young people! One young person said he's due back in court next week. No judgement from [reparation worker], just concern – "You feelin' OK about it?", he asked… Eventually we got started… Everybody joined in, I asked one of the young people to show me how it's done, which went down well – started chatting as we worked, he clearly really liked coming to reparation sessions… Later, during a cigarette break, I sat with the four young people and they told me about the various things they'd completed in reparation sessions. There was a real sense of pride in their work."

Research log, October 2017

The reparation staff engaged with the young people 'on their level'. They did not moralise but had many constructive conversations with young people about their lives and their offences – coming from a place of concern and interest, not judgement. Unfortunately, it was not possible to observe a reparation session in Llanfadog, so no comparison can be made between the two YOTs. However, given that the majority of reparative activities were undertaken by the case managers in Llanfadog, it seems fair to suggest that children's experiences of the reparation sessions would likely be coloured by their existing relationship with their case manager, in addition to the nature of the activities.

Five of the young people also spoke positively about their relationship with the substance misuse worker (three in Pengaron, two in Llanfadog). Again, it was not possible to observe supervision / substance misuse sessions, so it was impossible to establish whether, and if so, how, the case mangers' interaction with the young people differed to that of the reparation workers.

5.2.6 Opportunities: *The opportunities provided by the YOT / YJS versus the lack of real opportunities in their lives*

Most of the young people involved in this study had been subjected to multiple adversities (and often outright violations of their rights) during their lives (see generally Chapter 4,

section 4.3.2). Almost all of those with a breach history had been excluded from mainstream and alternative education provision, which usually meant that by the age of 16, they had none of the necessary qualifications to proceed with further education, no idea how to apply for jobs or apprenticeships, and quite often, no desire to do so. For those who *did* want to get a legitimate job, however, they viewed involvement with the YOT as the best – or only – route to achieving this. Being involved with the YOT was also good for getting other opportunities, according to five of the young people who were interviewed, such as going to the gym, or doing outdoor activities.

Perversely, the 'opportunities' presented to the young people through the YOT encouraged some of them to do whatever they could to sustain their involvement. Two of the young people stated that they would deliberately fail to comply with their orders, hoping to be breached and for their order to be extended so that they could take advantage of the opportunities provided by the YOT for longer. When asked to give examples of these opportunities, both mentioned a construction qualification, and one mentioned going to the gym. When asked if he could go to the gym without the YOT, he stated:

> *"Man, you know how much the gym cost? It's like… seven pound. I aint got seven pound to spend on tha'… With YOS, it's free init."*
>
> Jake, Llanfadog

The other young person stated that he would even reoffend to stay involved with the YOT. While it should not be assumed that the sole reason for this young person's offending was a desire to be referred to the YOT, it is nevertheless troubling that he felt that the only route to get opportunities for things other than committing crimes was, in fact, by committing a crime.

Another young person – Aaron, from Pengaron – saw 'opportunity' in prison. At the time of his interview, he was almost 18 years old, on a YRO with ISS, and had seven BSO offences on his record – the most recent only two weeks prior to the interview. He had not yet received a custodial sentence but was enthusiastic about a pending breach hearing, stating that he could feel he would "go down" this time. He was heavily involved in "road" (dealing drugs on the street) and stated:

"I always used to say to them [magistrates], 'fuckin hell, I wanna go jail. I wanna go jail'. Cos, cos of the money. And that's the easiest *way to do it is breachin a court order. The easiest way to go jail is keep breachin your court order."*

Aaron, Pengaron

For Aaron, a short custodial sentence seemed a good idea, as he believed it would provide an opportunity to make more money for dealing drugs than what he could make on the street:

"They [Aaron's friends] been in and out, in and out, in and out, in and out [of prison], like all the boys gone in and out, and it's just like, they goin' in there scruffy as hell, and they comin out all fresh with like a wad of cash like that, and you're like, well, marijuana do that… I want that lifestyle!"

Aaron, Pengaron

However, he did not like the idea of going to prison for a long time:

"[To go to prison] you can just go outside and batter someone, but what's the point in that – you're gettin' years. You do that, rip your tag off again, you get four months. It's not that hard. Just rip the tag off and you got four months in jail [for breach]."

Aaron, Pengaron

Refusing to comply with his order and risking being formally breached and sent to prison seemed to Aaron a common-sensical way of getting into prison to 'make his fortune' without having to stay there for too long. However, it became clear during this conversation that the superficial 'desire' to go to prison was actually a reflection his frustration at not having enough money to be able to buy the things he wanted:

"I wanna be able to go JDs, or go Cardiff, go in a Gucci shop, get nice Gucci and that… splash cash out on my missus and that, have a kid and that, get a fresh start and that, but I can't do that at the moment."

Aaron, Pengaron

Although he wanted a job and would prefer legitimate work rather than dealing drugs, previous experience made this seem impossible for him:

> *"Well I had a job in Harvester… and I was there a few weeks. And then they done a CRB check on me. And I'd told 'em I just had thefts; I didn't tell 'em I had a section 18 on my charge list… they told me 'you aint comin back here'."*

Aaron, Pengaron

Other young people who had expressed that they wanted to go to prison had similar experiences when trying to get a job to support themselves (and sometimes, their family). Blayne, also from Pengaron, was also involved in dealing drugs, but did not like the risk which was intrinsic to the lifestyle:

> *"I am tryin to get jobs, and they all [YOT] say I'm not, but I am though. I'm on 'Indeed' every single day lookin for a job. I don't want this lifestyle, I don't want… [pause] Cos one day, I could be walkin there, and somebody could come up to me, exactly the same as I'm doin to other people now, walkin up to them sayin 'give me all your stash', someone could come up to me and then I lost everythin'…"*

Blayne, Pengaron

This shows the extent to which some of the young people involved in this study felt trapped in a lifestyle of offending in order to 'get by'. The fact that they felt the only way for them to access opportunities and support to *move away* from offending was, paradoxically, through *committing more* offences, was a poignant example of the social injustice characterising their lives and an indictment of the services charged with enabling them to access their fundamental rights and entitlements for their failure to do so.

5.3 Promoting compliance and engagement: YOT 'tactics'

A variety of mechanisms were used in both YOTs to mitigate against some structural and/or personal barriers to compliance. While some of these were used purely as instruments to increase the likelihood of formal compliance (i.e. attending sessions), some also functioned to strengthen young people's engagement with the YOTs, or 'substantive

compliance' (see discussion on 'types of compliance' in Chapter 2, section 2.2.1). This section identifies some of the various 'tactics' that were used, although the extent to which these mechanisms were used varied according to the type of order the young people were subjected to (there was less flexibility with ISS, for example), and according to the individual practitioner. Where applicable, this subsection includes some interview data to reflect on the different attitudes of case managers and operations managers towards ways of helping young people to comply. This will provide some context for the discussion in the next chapter on breach decision-making.

5.3.1 Lifts to appointments and / or increased home visits

In both YOT areas, practitioners and managers recognised that it could be difficult for many of the young people to travel to their appointments and to get there on time. In Pengaron, many of the young people lived in areas where public transport services were poor or infrequent, and the location of one of the YOT's premises was largely inaccessible unless traveling by car. In Llanfadog, although public transport was better, some of the young people would have to catch two or three separate buses in order to get to the YOT. As such, most staff at both YOTs offered to young people a combination of lifts to the YOT and an increased number of appointments at their home / accommodation.

While most of the case managers and all of the managers (operations managers and heads of service) who were interviewed thought that this was necessary to enable young people to attend their appointments, a couple of staff in both YOTs disapproved on the grounds that they were taking responsibility away from young people:

> *"Personally, I don't think it's a good idea [giving lifts]. Especially with the older ones. What are they going to do when they get to probation? They have to learn to take responsibility for making sure they attend their appointments."*
>
> CM13, Pengaron

One of the case managers in Llanfadog stated that he would always give the young person a lift (in the absence of a parent / carer who could give a lift) to the first and second appointment, and sometimes the third:

"…but after that, it's up to them. I've shown them the YOT, how to get here, which buses to take… we give them bus money or a pass, so they've got no excuse…"

CM5, Llanfadog

Other staff who were more enthusiastic about giving lifts to young people saw it as a valuable opportunity to engage the young person. Often, they said, the young people were far more talkative in the car than in the YOT office or in their home / accommodation.

"It's a really good time to talk to them about their lives, what's going on, how they're feelin… most of 'em talk much freer in the car, probably because it's less formal"

CM3, Pengaron

"That's where I do most of my relationship-building. In the car. Actually, sometimes, like [young person] the other week – I picked him up, drove to the YOS, got to the YOS and was havin' such a good conversation with him about his life that I didn't stop and I carried straight on and just drove around for another hour… we did the appointment in the car!"

CM4, Pengaron

The difference in emphasis on formal and substantive compliance can be clearly seen here. While those who were (or wanted to be) parsimonious in their offers of lifts saw it only as a way of ensuring the young people attended their appointments (formal compliance), the others also saw an opportunity to build on the child's engagement with them (substantive compliance).

5.3.2 Reminders, appointment letters, and timetables

Case managers at both YOTs would often remind the young people of their appointments on the previous day, either verbally, by text, or a phone-call. This was in addition to the appointment letters which were often but not always hand-delivered to the young person or their parent / carer (appointment letters were hand-delivered more frequently in Pengaron than in Llanfadog). In Pengaron, the format of the letters were child-friendly and easy to understand, making use of pictures, icons, simple language and concise phrases. In one

case, where a young person was having real difficulties in keeping track of their appointments, the case manager created an individualised timetable for the young person and checked during each home visit that the timetable was still in the same place (clearly visible to the young person and their parent). In Llanfadog, the appointment letters contained no pictures or icons, and used more formal languages. While individualised timetables were created for every young person on ISS, there was no evidence of this being done for any other young person.

5.3.3 Encourage magistrates to make use of more 'successful' interventions

In Pengaron, staff seemed very aware of which interventions / requirements were more, or less, successful in terms of increasing the likelihood of completion (substantive compliance). For example, they had determined that the Unpaid Work Requirement which could be attached to YROs (for 16 and 17-year-olds) was too stringent for most young people (it had a rigid structure and had to be undertaken in four blocks of four hours per week). Staff had observed that many young people struggled to concentrate for that length of time, and that once the young people's motivation and / or concentration deteriorated, their behaviour would become more challenging and no benefit would come of the intervention. The YOT court officer presented this information to the magistrates and, as a result, magistrates stopped (for the most part) imposing an Unpaid Work requirement. Instead, they made far greater use of the Activity Requirement – which was used for reparation – which could be undertaken in shorter sessions over a longer period of time.

The Unpaid Work Requirement was rarely used in Llanfadog, but no explanation was given by the staff / management for this other than that they always tended to recommend reparation hours in pre-sentence / breach reports. While recommending reparation was a positive feature in Pengaron, where many of the young people saw these sessions as legitimate, supportive, and providing a sense of achievement, the same cannot be said for Llanfadog, where reparation was seen as stigmatising or otherwise boring or a 'waste of time'.

5.3.4 Flexibility with appointments

All of the staff showed some flexibility with the young people's appointments. Generally, if a young person missed an appointment but got in touch to explain why, they would be offered another opportunity to attend the appointment before the end of the week (even if

the reason given for missing the appointment was deemed 'unacceptable' or 'insufficient'). The degree of flexibility granted to young people, however, differed largely according the individual staff member, the views of their operations manager, and the nature of the order. Some staff would be happy to reschedule an appointment if a young person forgot about it; others would consider this to be an unacceptable reason and would send a formal warning to the young person. There was also a varying degree of flexibility among staff in relation to the location of the meetings. While some staff would be happy to meet the young person in McDonalds (if that was the only way they could ensure the young person kept their statutory contact), others would insist on seeing the young person at the YOT's premises.

5.3.4 'Doubling up'

If the case manager felt that the young person was overwhelmed by appointments, they would sometimes 'double up' with other workers. For example, they might see the young person for 10 minutes at the beginning of a reparation session and record both 'supervision' and 'reparation' contacts as 'contact kept'. This appeared to be a much more common practice in Pengaron than Llanfadog, but largely due to two case managers.

5.3.5 Using 'restorative approaches' with young people

This relates to the way in which the YOT responded to 'challenging' behaviour by young people and is best illustrated by an example. In one Referral Order review panel in Pengaron, a young girl lost her temper and verbally abused and physically threatened the case manager and the panel members. This was recorded in the girl's case file as a 'serious incident of failure to comply' which could warrant breach instigation. However, instead of instigating breach proceedings the decision was taken by an operations manager to write a letter to the girl explaining why her behaviour was unacceptable. Importantly, while this was stated very clearly, the main emphasis of the letter was praising the girl for her progress on the order to date and reiterating the YOT's desire for her to successfully complete the order. The girl did indeed proceed to finish her order successfully.

There were, however, counter-examples. Not long after the above incident occurred, a 16-year old boy in Pengaron was reported as being increasingly rude and threatening towards YOT staff as he 'disengaged' with his order. In his case, the response of the YOT was to threaten him with breach – a threat which was realised in due course. The young

person's attitude was extensively documented in the breach report. This set the scene for the breach hearing where he was sentenced to a four-month Detention and Training Order.

A similar case occurred in Llanfadog, when a 16-year old boy lost his temper and shouted and swore at his case manager before leaving the premises barely ten minutes after arriving for his appointment. He had lost his temper because he had requested all his appointments in the morning but his case manager had refused, stating that other young people had to be taken into account too. After a conversation with the operations manager, the case manager decided that the young person would be immediately breached, given that he was on ISS bail and had already been given a warning letter.

While these examples could be tentatively offered as illustrative of the different treatment of boys and girls, the fact that the case manager was different in each three cases should also be noted.

5.3.6 Problem-solving panels

In both YOTs, two types of panels were convened which had a problem-solving function. The first were concerned with the impact of significant changes in a child's circumstances on their level of 'well-being' and 'risk'. They also tried to anticipate the impact these changes may have on the young people's engagement with the YOT, and to try to come up with ideas for mitigating against the difficulties the young people were experiencing. The panels were attended by a variety of workers involved in the young person's lives. They were 'pro-active' panels, intended to find ways of mitigating or lowering the 'risks' to prevent an escalation.

The second type of panel – variously called 'compliance panels', 'breach panels', or 'exceptional panels' – were 'reactive'; responding to non-compliance by young people on criminal justice orders. Broadly, the purpose of these were to establish why the young people's compliance had deteriorated, and what steps could be taken to increase the likelihood of future compliance. The way in which these were operated, however, differed in each YOT.

In Pengaron, compliance panels were convened when a young person on a standard YRO, YRO with ISS, or DTO licence were struggling or refusing to comply with their order. They were attended by the young person, their parent / carer and their case manager, and were chaired by a middle manager:

"The idea is to give the young person an opportunity to explain why they haven't been complying, and to see what we can do to help them to get back on track."

OM1, Pengaron

Theoretically, they had a problem-solving function: to bring all four parties together to discuss and address issues which were affecting the young person's ability or willingness to comply with their order. They also provided an opportunity for the staff to refer back to the initial agreement form signed by the young person at court in order to reiterate to them (and their parent / carer) the importance of complying with the order and the possible consequences of failing to do so. The panels were both 'reactive' and 'preventative' – they reacted to incidents of non-compliance but tried to prevent further non-compliance by identifying barriers to address. That said, staff held very mixed opinions about these panels. Those who were more sceptical about them thought that although they were a good idea *in principle*, the actual impact of the panels depended entirely on the underlying tone. One staff member described a panel as:

"a telling off session… he [young person] barely uttered two words!"

CM4, Pengaron

This was not the case in the only compliance panel observed in this study.[84] The tone of the discussion was not judgemental, and while the three recently missed appointments were highlighted at the start of the meeting, the operations manager regularly praised the young person throughout the meeting, which lasted more than an hour. The emphasis was on putting mechanisms in place to help the young person to solve the problems which were affecting his compliance with the order. At one point, after an intense exchange between the young person and his mother where the subject of suicide was broached, the young person walked out of the room stating that he had had enough. When he came back in, he was praised by all the staff for demonstrating maturity in leaving the room to wait until he had calmed down rather than shouting and/or lashing out at his mother. The meeting ended on a high note, with the operations manager writing down in the young person's 'action plan' that the YOT would supply the young person with an alarm clock and would also change his future appointments from mornings to afternoons.

[84] In Pengaron. Only one panel was observed due to significant difficulties encountered in being informed by case managers about the panels as they arose.

Although this observation of a single compliance panel can by no means be taken as representative of all panel meetings, it did nevertheless highlight the important role these panels can play as a 'buffer' – diverting young people from formal breach proceedings by examining what more the YOT can do to accommodate the difficulties experienced by the young person and / or their family.

In Llanfadog, no 'compliance panels', as such, existed. The nearest equivalent was a local development: the 'breach panel'. These panels were usually convened following a second instance of 'unacceptable' non-compliance and the issuing of a 'final written warning' for those on a YRO with ISS. There was no equivalent panel for those on a standard YRO, or for DTOs. The 'breach panels' were chaired by the ISS Co-ordinator/Case Manager, and were attended by a YOS police officer, the young person's ISS worker, the young person, and (if under the age of 16) their parent(s) / carer. Unfortunately, no breach panels were observed.[85] However, the YOT's ISS breach policy and conversations with the Chair of these panels made it clear that the purpose of these breach panels was different to that of the compliance panels. The policy stated that a Breach Panel should:

a) give the young person and/or parent(s)/carer an opportunity to explain the non-compliance;
b) reiterate to the young person all the requirements of the order; *and*
c) *if appropriate,* formulate a plan (agreed by the young person) to help them avoid future non-compliance.

The policy further states that two outcomes are possible:

a) "the breach is upheld and the young person is returned to court; *or*
b) "the breach is held within [name of YOS] for an agreed specified time period… to give the young person the opportunity to re-engage with the programme. If positive, the breach will be withdrawn and the young person will remain on a final warning."

The wording of the policy is noteworthy. The fact that the options are for the breach to be upheld (sent back to court) or for the breach to be "held within the YOS" indicates that the decision to instigate formal breach proceedings has already been made prior to the panel

[85] Again, similar barriers were faced during the research when asking case managers to be informed of breach panels.

meeting. This impression was confirmed by the ISS co-ordinator / case manager who stated that:

> *"I've already made my decision before I go in... it's up to them [the young person] to persuade me to give them another chance… But really, I already know what my decision is going to be."*
>
> CM6, Llanfadog

Without observing the panels, it was difficult to assess to what degree they provided an opportunity to explore barriers to compliance and ways of preventing future non-compliance (thus avoiding breach action). It was also difficult to establish which factors would affect the decision of the ISS case manager / co-ordinator either to proceed with or hold breach action. Nonetheless, the aforementioned conversations and from the YOT's ISS breach policy suggest that these panels were primarily used as an opportunity to inform the young person that they are being breached, rather than a preventative or problem-solving tool.

In both YOTs, the mechanism for dealing with deteriorating compliance in relation to Referral Orders was slightly different but most closely resembled the 'breach panels' in Llanfadog. The YOTs' ability to convene an 'Exceptional Panel' – that is, a meeting with the Referral Order Panel – was usually only exercised when the case manager was of the view that the young person should be returned to court for breach proceedings (in other words, when the YOT had already made their decision). Despite statute stating that it is the *panel*'s responsibility to decide whether to instigate breach proceedings, in both YOTs, these panels were only convened when the case manager had already decided that the young person ought to be breached (hence the similarity to Llanfadog's breach panels). Whether the YOT's view was implemented by the panel is another matter (see Chapter 6, section 6.2.7).

5.3.7 Review Panels

In both YOTs, Referral Orders were reviewed every two to three months, depending on the length of the order. The potential of these review panels to promote young people's engagement is significant: they could be used to praise the young people for their progress, identify any elements of the order that are proving difficult and might need changing /

additional support, and ensure that the young person and his family are getting the right level and type of support.

In the three Referral Order review panels which were observed in Pengaron, the case managers did advocate for the young people and praised them for their efforts. However, due to poor facilitation of the young people's engagement by the panel members, their attempts to 'check in' with the young people and to ask how they felt about their orders were met with mostly monosyllabic answers. In the only review panel observed in Llanfadog, the case manager did not even attend and was replaced by another duty case manager at the last minute. Although he did his best to support the young person, the Chair of the panel appeared more interested in asking, disapprovingly, why the young person had completed only a small proportion of his reparation hours. The young person shrugged and the duty case manager could not answer. The panel ended with a warning from the Chair *to the young person* that next time they met, he expected 'better progress'.

In Pengaron, review panels were convened every two to three months for all other orders too. Although none were observed, the purpose of these panels was identified as being similar to the Referral Orders review panels. These review panels were attended by the young people (and sometimes their parents/carer), their case manager, and led by an operations manager. In Llanfadog, no review panels were convened for any other order, which meant that young people could be on an order (e.g. YRO) for up to three years without any formal review.

5.3.8 Parental support

In Pengaron, dedicated 'parenting officers' were employed specifically to support parents who wanted help with their child(ren). This was all done on a voluntary basis; the parenting officers would work with them for as long as the parents wanted / felt they needed. The work of the parenting officer included helping parents to develop strategies to improve communication and relationships with their children. These might include, for example, learning how to impose boundaries in a meaningful way. In turn, might have a positive effect on the likelihood of a young person successfully completing their orders. In Llanfadog, there were no dedicated family workers. It could be argued that dedicated family workers should not be necessary and that case managers are best placed to work with the family. Extending this argument, one might contend that having dedicated family workers may effectively absolve case managers of their responsibility to engage the young person's family / carers. However, a counter-argument would be that young people would feel uncomfortable with the idea of their case manager also supporting their parents,

feeling less able to talk openly with their case manager as a result. Given the prevalence of family breakdowns and conflict among the breach cohort (see Chapter 4, section 4.3), it seems that this could likely be the case. As such, dedicated parenting officers / family workers would be advantageous, if not necessary, for the purpose of strengthening relationships between the children and their parents / family.

5.3.9 Refer to *Enhanced Case Management* (ECM)

The *Enhanced Case Management* (ECM) approach was being rolled out across Welsh YOTs during the data collection phase. It is an approach to working with young people in the YJS which is grounded in the Trauma Recovery Model (TRM), where training focuses on how early attachment, trauma and adverse life events can impact on a young person's ability to engage effectively in youth justice interventions. Case / intervention planning for children is psychology-led under the ECM approach; the idea being that case managers and other staff will be able to tailor and sequence interventions more effectively according to the developmental and mental health needs of individual young people (Evans et al., 2020; see also Chapter 1, section 1.2.4 for a broader discussion on the strengths and limitations of ECM, including the marginalisation of children's participation rights).

Inherent to the ECM approach is a considerable degree of flexibility relating to the delivery and timing of various interventions, and an overarching emphasis on meeting children's 'needs' and building a good relationship. The reasons case managers gave for referring children to for ECM are examined in detail in Chapter 6, section 6.2.6; at this juncture suffice to say that some believed it would better enable children's engagement with the YOT and hence enable them to benefit from the interventions. Moreover, the ECM approach was perceived by some to legitimize 'deviating' from the formal breach procedure. It can be interpreted, therefore, as one 'tactic' for promoting young people's substantive compliance and avoiding breach.

5.4 Conclusion

This chapter has identified multiple barriers to children's formal compliance and engagement (substantive compliance). These barriers were either *intrinsic* to the orders, such as their length, content, and the style / mode of delivery; or *extrinsic* to the orders, arising from the individual circumstances and experiences of the children and their families. Given this, it seems unsurprising that some struggled and/or refused to comply with the requirements of their orders, especially when compounded by their treatment in

court proceedings and Referral Order Panels which constituted clear violations of their rights – not least in relation to Articles 3 (prioritization of best interests), 12 (listening to and respecting the child's views), 37 (freedom from inhumane or degrading treatment), and 40 (respect and dignity), of the UNCRC.

The legitimacy of breach as a response to non-compliance arising from such factors is dubious. It is anathema to 'children first', since it 'responsibilises' the children for the failures of services and the rights-violations perpetrated against them. While there were various mechanisms in the YOTs (more so in Pengaron than Llanfadog) which 'responsibilised' case managers and workers for enabling the child to *formally comply* (e.g. by giving lifts, flexibility of appointments, etc.), barriers which were intrinsic to the order and impeded children's *engagement* (i.e. content, length, approach to delivery) did not receive as much attention. Moreover, the extent to which these 'tactics' for addressing barriers were used varied between case managers. The reasons for this will become clear in the following chapter, where they are discussed in connection with the influences on YOTs' breach decision-making.

Chapter 6: Breach decision-making

6.0 Introduction

The findings thus far have demonstrated that many of the children who breached their orders had experienced multiple violations of their rights – in their lives in general, but also within the YJS (court and Referral Order proceedings). They were often deprived of their citizenship-based 'universal' entitlements (e.g. high quality, responsive, and accessible services; tailored education, training and work experience); and, perhaps unsurprisingly given this context, experienced genuine difficulties complying with the requirements of their orders / engaging with the YOT. On what basis, then, were these children breached by the YOT or Referral Order Panel? On what basis were they convicted? And, on what basis did magistrates decide how to respond to an admission or finding of 'guilt'? These are the questions which this chapter aims to address.

The chapter is ordered as follows. Section 6.1 reminds the reader of the range of responses which are possible following an instance of non-compliance, thus highlighting six key areas of decision-making in the breach process. It then proceeds to give an overview of the local breach policies developed by each YOT.

Section 6.2 discusses the factors which, during interviews and informal conversations, YOT staff, Referral Order Panel (ROP) volunteers, and magistrates, said influenced their breach decisions. It is worth reminding the reader at this juncture that far fewer magistrates and Referral Order Panel members were interviewed compared to YOT staff. Moreover, the months spent on the premises of YOTs provided a far richer insight into the views and practice of the YOT staff than interviews alone would have done. As such, the views of YOT staff are much more prominent in this chapter than those of the magistrates and panel members.

Section 6.3 contains a summary of the themes identified in analyses of breach decisions recorded in young people's case files. While some of the themes identified reflect those which YOT staff identified as affecting their practice, other themes emerge from the case files which were not raised during interviews.

Section 6.4 considers the content of, and language used, in breach reports authored by YOT staff. It pays particular attention to the 'recommendations' made by the YOT to the courts and the justifications for those recommendations.

Section 6.5 focuses on the breach proceedings, decisions and outcomes in court. Significant concerns are raised about the apparent lack of due process in breach hearings.

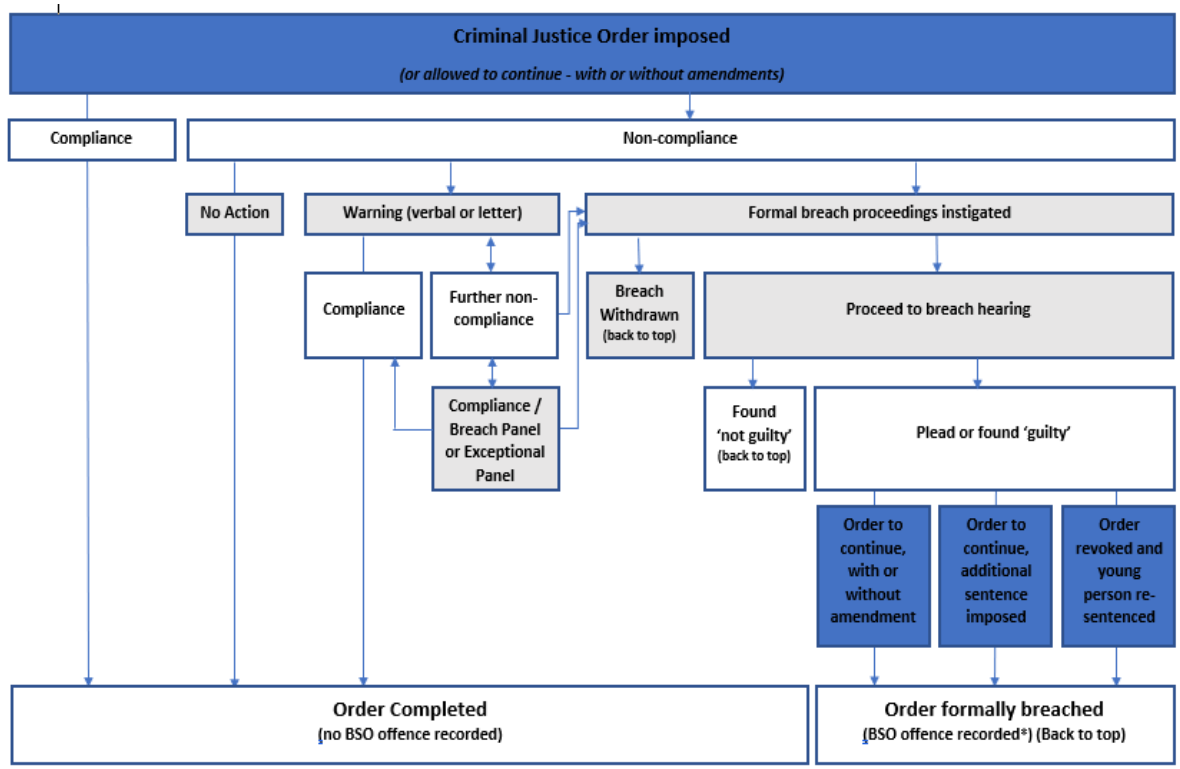
This is especially in relation to the basis of children's 'guilty' pleas to charges of breaching a statutory order; and the inefficacy of the magistrates' questioning of the children and the YOT representatives to establish whether there was a "reasonable excuse" for the instances of non-compliance cited in the breach reports.

Section 6.6 concludes the chapter – and the research findings – by returning to the questions posed above and highlighting the key issues which will be discussed further in Chapter 7 in connection with the rest of the findings from this study.

6.1 'Doing' the order: possible pathways and YOT breach policies

The diagram below illustrates the various possible pathways which young people subject to a criminal justice order may follow.[86] These were similar in both YOTs, with the exception of 'compliance panels' or 'breach panels'. In Pengaron, case managers were encouraged to convene 'compliance panels' when young people's compliance started to deteriorate on *any* order; the corresponding 'breach panels' in Llanfadog were only used in relation to young people on a Youth Rehabilitation Order (YRO) with and Intensive Surveillance and Supervision (ISS) requirement (see also Chapter 5, section 5.3.6). The 'exceptional panels' refer to Referral Order Panel proceedings.

[86] This was designed based on the information gathered from the two YOTs – it might differ slightly in other YOT areas.



*It has already been acknowledged that the YJB only records BSO offences with 'substantive' outcomes (i.e. revocation of original order and / or imposition of a new disposal). On the YOTs' case management systems, however, any breach of order proven at court is recorded as a BSO offence.
** The only exception is the decision to breach following an 'exceptional panel' for Referral Orders: this is, by law, the panel's decision to make, not the YOT's.

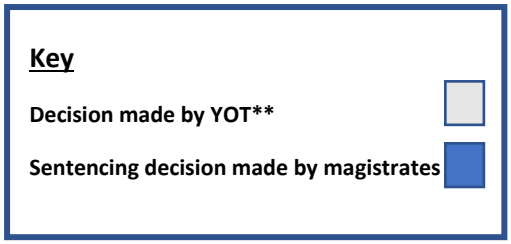


Figure 8. Criminal Justice Order 'Pathways': (Non)compliance and Breach

This diagram helps to illustrate the key areas of breach decision-making, and the flexibility which is inherent to the process (see also Chapter 2, sections 2.4 and 2.5). First (step 1), the YOT must adjudicate on the instance of non-compliance: is it acceptable, or unacceptable? In so doing, they must try to establish why it happened by seeking an explanation from the child. It is not clear what they should do in the absence of an explanation; but the discretion afforded to YOTs under the *National Standards* (see Chapter 2, and this chapter) suggests that they should exercise their professional judgement based on their knowledge of the child's circumstances. If they decide that the non-compliance occurred without an acceptable reason, then they must choose how to respond (step 2). According to Pengaron's breach policies (see later in this section), this response should be formal – i.e. via a written warning and/or convening a compliance panel (or proceeding straight to breach, depending on the circumstances). However, informal responses in the form of verbal warnings were also widely used by some practitioners. Moreover, following one or

more instance of non-compliance (whether acceptable or unacceptable), the YOT should consider what actions it could take to promote future compliance and engagement and put these into practice.

If 'unacceptable' non-compliance persists, the YOT or the Referral Order Panel must decide if, and when, to breach the child (step 3). If the child is breached, the YOT must write a breach report (step 4). Here they must decide what information to include in the report and what sentencing recommendation to make to the court, in the event of a 'guilty' plea or finding. In the breach hearing, the child's 'guilt' must be established, either by admission or by finding (step 5). Finally, if the child admits to or is found guilty of the breach, the magistrates must decide how to respond (step 6). They may choose to implement the YOT's recommendations, but equally, they may make a different decision.

At this juncture, it is apt to comment on the YOTs' local breach policies, since these, one assumes, are likely to influence practitioners' breach practice. In Chapter 2 (section 2.4.2), it was mentioned that the *National Standards* require YOTs to develop and implement their own local policy on enforcement and compliance which is in keeping with the relevant legislation and the *Standards* themselves (MoJ and YJB, 2013:6). In Llanfadog, no such policy existed, except in relation to criminal justice orders with an ISS requirement. This ISS breach policy stated that:

> *"The [YOT name] ISS Compliance and Enforcement policy allows for a maximum of two formal warnings before a young person and their parents / carers are referred to a YOS Breach Panel…… [where] a young person can be given a very final chance on the programme or … must be referred back to Court".*

This is a severe application of the legislation on breaches of YROs, which *requires* YOTs to instigate breach proceedings upon a third unacceptable instance of non-compliance within a 12-month period unless there are 'exceptional circumstances', but also *permits* them to instigate breach proceedings after only one or two unacceptable failure to comply (see discussion in Chapter 2, section 2.4.2). Although according to Llanfadog's policy there is a possibility that the young person may "be given a very final chance" after only two 'unacceptable' instances of non-compliance, equally, the young person may be referred back to court for a breach hearing.

In Pengaron, a local breach policy had been developed for Referral Orders, Youth Rehabilitation Orders (including those with an ISS requirement), and Detention and Training Orders.[87] The main elements of these breach policies are captured below.

Referral Orders: Recall that there are three ways in which a young person can be breached for failing to comply with the requirements of a Referral Order: (1) by failing to attend the "initial panel"; (2) by failing to agree to a "contract"; and (3) by failing to comply with the requirements specified in the contract. In relation to the first type of non-compliance, the policy states that if a young person does not attend the initial panel and the reason given "appears to be unacceptable, or no reason is provided", the panel "should refer the young person back to court to consider re-sentencing" (i.e. instigate breach proceedings). In relation to the second type of non-compliance, the policy allows for a "further meeting" to be held within ten working days if no contract is agreed in the original initial panel. If there is "no prospect of a contract being agreed", however, the young person "must be referred back to court to consider re-sentencing". As for the third type of non-compliance, if, after receiving two "formal warnings" (i.e. warning letters), a third unacceptable instance of non-compliance arises, an 'exceptional panel' must be convened within 10 working days. Here, the panel must "consider" whether to send the young person back to court, as well as consider whether the original contract was "too demanding thereby making it too difficult to comply with". In this instance, the contract can be "varied to accommodate the diversity [of] needs of the young person".

Youth Rehabilitation Orders: this breach policy states that, for a supervision requirement (which is the most common requirement attached to YROs), "breach action *must* be initiated" (emphasis added) if, after receiving two formal warnings, a third instance of unacceptable non-compliance takes place within twelve months of the first instance. This is the case unless an Operations Manager authorises a 'stay' of breach action, or, conversely, unless there are "significant concerns of risk of serious harm to others", in which case breach proceedings can be instigated after only one or two instances of unacceptable non-compliance. The policy also states that 'compliance meetings' should be held after "two unacceptable failures to complete an appointment" (note that this requires the young person to *complete* appointments, not simply *attend*), or after "a serious failure to comply… i.e. aggression during contact with the Youth Offending Service".

[87] Pengaron also had a local breach policy for licences for longer-term s.90/91 custodial sentences, Youth Conditional Cautions, and bail supervision /support.

For YROs with an electronically-monitored curfew requirement, the policy is more stringent, requiring breach to be instigated "immediately" if two "less serious" violations[88] are perpetrated in one incident, or after one "serious" violation.[89] Otherwise, the YOT must instigate breach proceedings after a third incident of a single 'less serious' violation. The policy for an unpaid work requirement is also more stringent, stating that breach proceedings should be instigated upon a *second* unacceptable failure to comply within 12 months of receiving the initial warning letter, and may be instigated after a single failure to comply "if deemed appropriate". The policy for the ISS requirement is the same as that for the supervision requirement, with the exception that it is only the Head of Service who can decide not to instigate breach proceedings once the threshold for breach (three unacceptable instances of non-compliance within 12 months) has been reached.

Detention and Training Order: The 'breach criteria' are the same in this policy as those for the supervision and ISS requirements of a YRO: i.e. three instances of unacceptable non-compliance within a 12-month period. As with the YRO supervision requirement, a decision to 'hold' the breach or instigate breach proceedings earlier due to concerns about "risk of serious harm to others" must be authorised by an operations manager. The policy for DTOs with an electronically-monitored curfew / ISS are the same as those when they are a requirement of a YRO. The provision for convening a compliance panel is also the same as that in the YRO policy.

Generally speaking, then, there is a sense of a 'three strikes' rule in each of Pengaron's three breach policies. Moreover, even though the Referral Order breach policy does not specify a timeframe within which the three failures to comply must occur, given that the maximum length of a Referral Order is 12 months, the time frame is the same as that for YROs and DTOs (12 months). This reflects the *Case Management Guidance* (YJB, 2014) and the YRO legislation, although as noted in Chapter 2 (section 2.4.2), these provisions are not made in the legislation for Referral Orders and DTOs, nor are they specified in the *National Standards* (see also discussion in section 6.2.1).

Common to all three of Pengaron's policies – and unlike Llanfadog's ISS breach policy – is an emphasis on ensuring that the child and their parent/carers have "fully understood" the requirements of their orders from the beginning. Further, there is strong emphasis on professional discretion, and the need to consider the child's circumstances

[88] "Less serious" violations are defined as: "first or second curfew violations, each totalling two hours or more", or "first or second minor tampering with equipment i.e. not removal or causing malfunction".
[89] "Serious" violations are defined as: being absent for a whole curfew; curfew violations totalling 2 hours or more after two previous warning letters; third minor tampering with equipment; removal of equipment; damage causing malfunction to the equipment; or physical assault on, or threat of violence to, any of the contractor's staff.

when assessing the acceptability of the non-compliance (absent in Llanfadog's policy). This is illustrated by the following paragraph (included in all three policies):

> "There is room for professional discretion when deciding if a reason for a missed appointment is acceptable. The young person's welfare, provision of support to meet welfare needs, the young person's circumstances, intervention level, overall compliance, and their commitment to completing the order, should be taken into account"
>
> *Pengaron breach policy*

It is also worth highlighting that the most stringent policy in Pengaron is in relation to electronically-monitored curfews, and the YRO 'unpaid work requirement'. This is interesting, as common to both these requirements is the involvement of external parties in monitoring compliance – the Electronic Monitoring Service, and the unpaid work provider. This greater stringency in the YOT's response to non-compliance with these elements may, therefore, indicate a concern within the YOT about being seen by these external parties to respond 'robustly' to non-compliance (see section 6.2.4). Indeed, this was one of many influences on practitioners' and managers' breach practice. It is to these influences the dissertation now turns.

6.2 Influences on responses to non-compliance

Six overarching themes were identified while analysing data both from interviews and informal conversations with YOT staff, Referral Order Panel (ROP) volunteers, and Youth Court magistrates: (1) the influence of *National Standards*; (2) consideration of the child's best interests; (3) perceptions of the child's 'risk' to others; (4) concerns for the YOTs' and courts' reputation; (5) individuals' values and beliefs about personal responsibility; and (6) the influence of the 'Enhanced Case Management' (ECM) approach and its underpinning theory. A seventh theme was identified among some of the ROP volunteers and the magistrates: that of deferring to or concurring with the advice of the YOT staff, on the basis that the latter are best placed to identify the best course of action for the children.

6.2.1 National Standards for Youth Justice Services

All but one of the YOT practitioners and managers who were interviewed identified the *National Standards for Youth Justice Services* (MoJ and YJB, 2013) as having at least some influence on their breach decisions. The remaining interviewee (from Pengaron), while adamant that her decisions were always led by what she thought best for the child, complained that even she could not entirely escape the influence of the *National Standards*. This was because the operational managers could and sometimes did over-ride her decisions in favour of actions that they thought would better conform to the *Standards*.

So what, specifically, were the *Standards* which influenced the YOTs? The practitioners' interpretation of the *Standards* on non-compliance was uniform across both YOTs: instigate breach proceedings after a third 'unacceptable' instance of non-compliance, except in cases where there are 'exceptional' circumstances. The managers who were interviewed concurred with this interpretation but were more likely to highlight the scope for exercising professional discretion too. The influence of the *Standards* was primarily procedural: those who identified the *Standards* as the main influence on their breach practice explained this in terms of rigorously employing a "three-strikes" policy (instigating breach proceedings upon a third 'unacceptable' instance of non-compliance[90]), while those who stated that the *Standards* were a lesser influence explained this in terms of the extent to which they deviated from a "three-strikes" policy. For example:

> *"…it's supposed to be two written warnings then a breach, but sometimes I'll give them three [written warnings]… or sometimes I'll give them a verbal [warning] instead of a letter…"*
>
> CM6, Llanfadog

At this juncture, it is necessary to recall what the (2013) *Standards* stipulate in relation to procedures for non-compliance (see also Chapter 2, section 2.4). The first and a particularly important point to make is that the *Standards* do not dictate what ought to constitute 'un/acceptable' reasons for non-compliance. This is left entirely to the discretion of each YOT. The *Standards* only require that YOTs establish and implement a clear local policy and protocol in relation to "enforcement and compliance with court orders" and "acceptable behaviour" (MoJ and YJB, 2013:6), and that on the making of any order YOTs

[90] No specific timeframe (number of months) for the occurrence of these three instances of non-compliance was specified – although staff indicated that instances of non-compliance which occurred in relatively close succession were more likely to result in a decision to breach.

must explain to and ensure that the child and parent / guardian understand their rights and responsibilities. This includes explaining the requirements of the order and the YOT's criteria for un/acceptable absences, timekeeping, and behaviour (MoJ and YJB, 2013: p.28). This must be set out in writing and a copy given to the young person and, if appropriate, their parents / guardian. The only reference to warning letters in the text of the *Standards* reads as follows:

> "where the failure to comply is judged as unacceptable, a written warning must be issued which: describes the circumstances of the failure to comply; states that this failure is unacceptable; and informs the young person that they are liable to be returned to court or in the case of Referral Orders, referred back to the panel, for their failure to comply." (MoJ and YJB, 2013:27)

This does not specify any number of written warnings that the YOT must give to a child before instigating breach proceedings, nor does it specify a time frame for the failures to comply. However, the *Standards* stipulate that responses to non-compliance with YROs must be in accordance with schedule 2 of the *Criminal Justice and Immigration Act 2008*, or for Referral Orders, schedule 1 of the *Powers of Criminal Courts (Sentencing) Act 2000*. As already discussed (see Chapter 2, section 2.4), the YRO is the only order for which there is legislation stipulating the number of unacceptable instances of non-compliance which are permitted before breach proceedings must be instigated (three instances within a 12 month period).

In sum, what does the text of the *National Standards* and the two pieces of legislation cited above *actually* require of YOTs when responding to non-compliance? The *Standards* require YOTs to issue a written warning to young people following an instance of non-compliance which they have judged to be 'unacceptable'. It is assumed that this relates to all community interventions (including the community element of DTOs) since it comes under the 'Planning and delivering interventions in the community' standard and does not differentiate between orders. For YROs, the legislation states that a third instance of 'unacceptable' non-compliance within a twelve-month period should result in the instigation of breach proceedings unless there are 'exceptional circumstances', but also states that YOTs have the ability to instigate breach proceedings following only one instance of 'unacceptable' non-compliance with a YRO. For Referral Orders, the legislation indicates that breach proceedings will be instigated if the Panel thinks it is

appropriate to do so. For the community element of DTOs, the *Standards* give no specific instructions nor cite any legislation.

Evidently, then, the YOT staff's interpretation of the *National Standards* as requiring a "three-strikes" policy for unacceptable non-compliance was only accurate in relation to YROs. While in Pengaron, their local breach policies reflected a 'three-strikes' rule across all orders – and hence practitioners' interpretation was consistent with the local policy – it was notable that none of the practitioners in Pengaron mentioned their local breach policies as an influence on their practice. When the managers were asked about the inclusion of a 'three-strikes' policy in relation to all orders (not just the YROs), they stated that they had based their local policies on the *Case management guidance* (YJB, 2014). This is a document produced by the Youth Justice Board to accompany the *Standards* but not referred to at all within the *Standards*. The *Case management guidance* (henceforth, '*Guidance*') states under section 6 - 'community interventions' - that if two formal warnings are issued within a twelve month period, and during this period a further instance of unacceptable non-compliance occurs, breach proceedings *must* be instigated within five working days, or two working days for those assessed as presenting a 'high risk' to others (YJB, 2014). This applies to all community interventions.

The fact that the source of this "three-strikes" policy was the *Guidance* (non-statutory guidance), not the *Standards* (statutory guidance), is important. All the managers who were interviewed raised the issue of inspection. They stated that they had to make sure that their breach practice conformed to the *Standards* as their performance as a YOT would be judged on how well they were implementing the *Standards*:

> *"ultimately we've got guidance which we've got to adhere to as well – the National Standards…we are measured by the YJB on breach processes"*
>
> OM1, Pengaron

But by employing a "three-strikes" policy as a basis for breach decisions across all orders, their policies were, in fact, conforming to the *Guidance*, not the *Standards*.

Even within the *Guidance*, there is much scope for exercising discretion in deviating from the "three-strikes" policy. The 'exceptional circumstances' provision of the *Standards* is reiterated in the *Guidance*, stating that in deciding whether or not to breach, the YOT should "consider overall progress on the order" (para.2.25), not just the number of instances of 'unacceptable' non-compliance. This suggests that YOTs should not only be taking into account the amount of *formal* compliance by children (that is, attendance

rates / curfew adherence), but also the quality of their *engagement* with the order (substantive compliance). Further, the *Guidance* states that the YOT manager can 'suspend' *National Standards* – in effect, pausing the requirements of the order (para. 3.5). This discretionary power could be used by YOTs to avoid instigating breach proceedings in the event of persistent non-compliance if the manager believes that there are greater, underlying issues in the child's life which need addressing before compliance with the requirements of the order could be reasonably expected (see also discussion on ECM in Chapter 5, section 5.3.9, and also this chapter, part 6.2.6).

But all these procedural decisions – whether to send a warning letter, whether / when to instigate breach proceedings – these decisions need only be made if, in the first instance, the YOT decides that the non-compliance was unacceptable. To do so, they must determine that there was no reasonable explanation for the occurrence of the non-compliance. Indeed, in the absence of a 'guilty' plea, for a young person to be convicted of a BSO offence, the prosecution must prove to the criminal standard that the instances of non-compliance occurred "without reasonable excuse".[91] Deciding whether an instance of non-compliance is un/acceptable, then, is arguably the most important aspect of breach decision-making.

Over half of the total instances of non-compliance found across 76 case files (see Chapter 5, section 5.1) were either marked as 'acceptable' or had no recorded adjudication (i.e. they were not marked as 'unacceptable'). While interviewees stressed that these decisions had to be considered within the context of each individual young person, the influence of the *Standards* – or rather the influence of the *Guidance* – was never far away. Four of the practitioners (three from Pengaron and one from Llanfadog) and two of the operations managers (one from each YOT) stated that they often felt conflicted when deciding how best to respond to non-compliance:

> *"The thing is, we know that their [young people's] lives are chaotic, lots of them in care being shuffled around – some in Bed and Breakfast, no stability – they're takin' drugs and their mates are too, so really, there's some very good reasons why they're not complyin' with their order… But what do you do? We've got the Standards…"*
>
> CM3, Pengaron

[91] Given the connotations of the term 'excuse' (explained in Chapter 2, section 2.4.3) the term "reasonable explanation" rather than "reasonable excuse" is preferred in this study. As such, "reasonable excuse" is only used when quoting directly from legislation or YJB documents; otherwise, "reasonable explanation" is used.

This quotation reflects a widespread view among practitioners and managers about the source of many children's non-compliance: 'chaotic lives'. The 'chaos' which they described – inadequate and unstable accommodation, substance misuse, family breakdown, domestic violence and neglect, for example – are clear examples of service failures and outright violations of children's rights (see Chapters 4 and 5, generally; see also Laming, 2016, and discussion in Chapter 7, section 7.1). Nonetheless, despite knowing that these were often the factors which affected children's ability to comply, they still held the children accountable by employing the formal breach process – warning letters etc. – because of what they interpreted as the requirements of the *Standards*. But as has already been pointed out above, the *Standards* make no attempts to define 'un/acceptable' criteria for non-compliance.

In fact, it is up to the individual YOTs to define what they consider to be 'acceptable' or 'unacceptable' non-compliance, and the *Standards* require this to be formalised in local policies. Recall that no attempt was made to define un/acceptable behaviour in Llanfadog's only breach policy (ISS), but that in each of Pengaron's breach policies, the following statement was made:

> *"There is room for professional discretion when deciding if a reason for a missed appointment is acceptable. The young person's welfare, provision of support to meet welfare needs, the young person's circumstances, intervention level, overall compliance, and their commitment to completing the order, should be taken into account."*
>
> Quotation from Pengaron breach policies

Given that the *Standards* expect YOTs to conform to their local policies on breach, the above passage should have reassured both practitioners and managers in Pengaron that it was perfectly in line with the *Standards* not to issue a warning after an instance of non-compliance where, in their professional opinion, there was an acceptable or reasonable explanation for its occurrence. But this was not always the case. Rather, factors which some of the staff identified as being reasonable explanations for non-compliance – things such as accommodation disruption or instability, conflict within the family, serious substance misuse, general 'chaos' in young people's lives – seemed mostly to have an impact on breach decision-making only once the young people had exceeded two or more formal warnings and were at the cusp of being breached. In making the case for 'staying' breach proceedings, some of the staff would invoke these factors as "exceptional

circumstances". Without the preceding discussion of the influence of the *Standards* on breach decision-making, it would be puzzling why such circumstances (which were hardly 'exceptional') became relevant only at such a late stage in the breach process. However, it is clear that the pressure to conform with the (perceived) *Standards* was such that many staff felt obliged to issue warnings to young people, despite knowing that they often had good reasons for failing to turn up to a session, or swearing at / threatening staff, or violating their curfew.

All of the operations managers and YOT managers in both YOTs were asked how they would deal with the issue of breach if the *National Standards* were to cease to exist. All five stated that they would like to have more flexibility in their breach practice, but that they would retain a warnings system of one sort or another. One operations manager in Pengaron was adamant that a "strike" system was the only realistic option – whether that was three "strikes" or four or five:

> *"it would probably be the same, or very similar, I'd imagine… you need some kind of standardized process, you can't just leave the decision of whether to breach to the whims of practitioners… we'd have complaints from parents, sayin' 'My Jonny's been breached so why hasn't Bob across the road?'"*
>
> OM2, Pengaron

None of the managers thought that breach decisions should be based solely on the views of the practitioners. They thought that this would lead to real inconsistencies – even with sufficient oversight by managers – which could be end up being unfair to some young people. Interestingly, none of the managers questioned whether sending young people back to court for breach was ever the right response to non-compliance, although the Head of Service at Pengaron talked extensively about his desire for the current court system to be replaced by something less formal and more child-friendly, and that if that were the case, non-compliance and breach should be less prevalent (see Chapter 5, section 5.2.4.1 for discussion on court experiences).

6.2.2 The child's best interests

After the *National Standards*, the 'best interests of the child' was the second most frequently cited influence on breach decision-making among YOT staff. None of the Referral Order Panel members mentioned the child's best interests, and the only magistrate

to mention it was the interviewee from Llanfadog. However, interpretations of 'best interests' and the way in which this affected breach practice varied significantly among YOT practitioners and managers.

Crudely, the YOT staff could be placed into two categories: those who were 'pro-breach' (i.e. who thought that the breach process was desirable and should be used) and those who were 'anti-breach' (i.e. those who did not approve of the breach process and tried to avoid it). Pengaron had a combination of 'pro-breach' and 'anti-breach' staff, whereas all of the staff in Llanfadog were 'pro-breach'. This does not mean, however, that those who were 'pro-breach' did all the breaching and those who were 'anti-breach' never breached any young people.

Those who were anti-breach believed that sending a young person back to court for a breach hearing was damaging to the children. Several reasons were given to justify this position, such as:

> *"it's not good for 'em to be going back to court, back to court all the time… they just get used to it in the end, it becomes their norm"*
>
> CM10, Pengaron

> *"I think [breach is] counterproductive. You're sendin' them back to court so that the court sends 'em back to you! Like table tennis! That's not good for our relationships… it's like you're sayin', 'right, I've had enough of you' – and that's bad in itself, cos they get enough of that from everybody else in their life – and then when they come back with extra reparation or whatever it is, it's like you're expectin' them to see sense now and just forget about all the stuff that's goin' on in their life!"*
>
> CM12, Pengaron

> *"If it was only up to me, [young person] definitely wouldn't be breached. I keep telling [operations manager] that [young person] is only lying because of all the problems going on in her life… she really can't handle all these appointments at the moment. Her life is just chaos. And we're supposed to be there to support her! I just can't see how breaching any young person in this situation is helpful. All the effort you've made to build up a relationship… it just disappears."*
>
> CM4, Pengaron

Each of these three practitioners believed it was never in the best interest of the child to go to court: they thought that going through the court process was damaging, or, in some cases, traumatic. Although they did not use the term 'diversion', it is clear that they believed that maximising diversion from the formal system was necessary for the purpose of minimising / doing no harm – a core principle of 'children first' as identified in Chapter 1 (section 1.4). The idea of being responsible for inflicting further harm on the young people by sending them back to court was unacceptable to the three practitioners. The negative impact of going back to court would be compounded, they thought, by the fact that it was the YOT – whose principal function is to support the young person – responsible for sending them back. They recognised that many of the young people on court orders had already experienced multiple rejections and/or breakdowns in relationships with people who should care for and help them, and thought that sending a young person back to court for non-compliance would risk jeopardising their relationship too. Apart from the 'moral' case for being 'anti-breach', two of the practitioners also stated that practically, breaching young people made little sense. This is because it did nothing to solve the underlying problems in the young people's lives, and so these problems would remain after the conclusion of the breach hearing.

It is not surprising that they held this view of breach hearings, because it reflected how breach was primarily used in the YOTs – i.e. to 'enforce' compliance, or to get them 'back on track' (see ensuing discussion). However, as discussed in Chapter 2 (section 2.4.3), a breach hearing has the potential to be used as a problem-solving mechanism to identify and mitigate barriers to compliance. The magistrates' options to amend the order or resentence the child to a different order could be used to ensure that the requirements of the order are appropriate and feasible for the child. For example, the court could change (reduce) curfew hours, or remove and/or replace requirements which are particularly problematic. Moreover, a breach hearing can provide an opportunity to hold services accountable for discharging their duties to the child. The *Guidelines* for sentencing children and young people state that:

> "A court must ensure that it has sufficient information to enable it to understand why the order has been breached and *should be satisfied that the YOT and other local authority services have taken all steps necessary to ensure that the child or young person has been given appropriate opportunity and the support necessary for compliance*." (Sentencing Council, 2017:34, emphasis added)

That said, it should be highlighted that the court's requirement to check that the YOT and all local authority services have taken "all steps necessary" to support the child's compliance arises *after* the plea / finding of guilt for breaching a statutory order. This question – whether the child was given the *support necessary for compliance* – should surely be considered *before* determining whether the order has, in fact, been breached. If the child's non-compliance was affected because the child did not receive the necessary support, this would surely constitute a "reasonable excuse" – in which case, there should be no breach conviction. A more legitimate way of addressing such barriers to compliance would be through employing the mechanism for returning 'unworkable' requirements to court and make the case for an amendment.

Among those who were 'pro-breach', numerous justifications were given for why breaching young people was in their best interest. Some talked about 'therapeutic' breach: i.e. breaching the child in order to bring them back on track with the order. Getting the child 'back on track' was clearly in the child's best interest, they argued, because completing the order was helpful to the child and could improve their life chances. In the words of one case manager:

> *"We do a lot for them here in the YOS that they don't get from anywhere else. It's not just the offending behaviour work and that side of things, we also take them out for food, activities, we help them with jobs applications or getting into college… so if they start to disengage, they're losing out on all the good stuff. So yeah, it's definitely in their interest to finish the order."*
>
> CM1, Pengaron

Another justification was that sending formal letters and instigating breach proceedings was a way of setting boundaries, and:

> *"All children need boundaries. It's good for them to know what is and isn't OK. That's how you learn to get on in life, by not doing whatever you fancy whenever you want without thinking about the consequences…"*
>
> CM5, Llanfadog

For this case manager, enforcing statutory orders was comparable to grounding one's child for breaking a rule. He firmly believed that he was acting in the child's best interest when instigating breach proceedings because learning that 'actions have consequences' is

essential if one wants to live as a member of 'society'. Even when the consequence of breach proceedings was the revocation of a community sentence and the imposition of a custodial sentence, one practitioner still thought that this was in the best interest of the young person:

> *"Sometimes going to prison is the only thing that makes them [young people] realise what kind of life they actually want. Like [young person], for example. He's been in prison three times now and now he says he definitely doesn't want to go back. He's workin' really hard at his job applications, and he hasn't offended since he came out"*
>
> CM14, Llanfadog

What this case manager failed to mention was that this particular young person had been out of custody for only three weeks. He also failed to consider the deeper emotional / psychological impact of being incarcerated on the young person, as well as the 'schools of crime' argument (see e.g. Chapter 1, section 1.1). Two weeks after the interview from which the above quotation is taken, the young person in question was back in custody on remand having committed his most serious offence yet after running away from his hostel and going 'missing' for three days.

Evidently, then, staff's interpretation of what constituted the 'best interests of the child' varied significantly. Interestingly, only one of the YOT staff who was interviewed – the Head of Service at Pengaron – mentioned 'children first, offenders second' (CFOS) when asked about the influences on their breach practice / policy. For him, CFOS was synonymous with acting in the child's best interests through emphasising their rights – especially their participatory rights, their right to family life, safe accommodation, and 'opportunities'. These priorities were certainly reflected to a significant degree in many elements of Pengaron's work: there was a clear emphasis on involving the young people in the design of their orders (including the types of activities they undertook as reparation); there was a dedicated family worker who supported the young people's families; a lot of energy was dedicated by the staff chasing Children's Services to find safe accommodation for the young people in care (often in vain); and the YOT did provide many opportunities for the young people that they would not otherwise get (as testified by the young people themselves – see Chapter 5, section 5.2.6).

In relation to breach, the Head of Service at Pengaron thought that if properly grounded in CFOS, responses to non-compliance would take proper account of each child's circumstances. But, as he pointed out:

> *"if every part of the youth justice system was 'children first', non-compliance would be far less of an issue. Of course there are some kids who just won't do anything at all, but the problem we've got is that a lot of these young people are put on orders that are entirely inappropriate in the first place, given their circumstances… But we're limited when we make recommendations to the court – we've only got so much choice, and so have they"*
>
> HoS, Pengaron

The other interviewee who mentioned CFOS was the magistrate from Llanfadog. She saw CFOS as a principle whose value was to remind the various actors within the YJS – the police, the judiciary, the YOTs, etc. – that they were dealing with children, not adults, and that they should treat them accordingly. This meant taking care to use language that was intelligible to children, remembering that it is not reasonable to expect children to take full responsibility for their actions, and prioritising the 'reintegration' of young people into their communities rather than punishing them for their actions. This was reflected in her sentencing practice, she claimed:

> *"With kids, it really shouldn't be about punishment, or at least, that can't be your main focus. What do we all want, really? We want them to be successful, we want them to make something good of their lives. Well let me tell you: you can't do that if you're ostracised from your community… and a lot of these kids and their families, they are living on the edge of their communities, of society. That's why I'm saying, your goal in the criminal justice system* has *to be reintegration. For adults, that might be harder to do. But young people? They've got their entire lives ahead of them. They just need someone to show them the right way."*
>
> MAG4, Llanfadog

When the rest of the managers and practitioners were asked what CFOS meant to them, the response was invariably to do with addressing / mitigating children's welfare needs. Only one of the operations managers mentioned focusing on the young people's strengths and

developing those. The interpretation of CFOS among three of the five managers who were interviewed was very much concentrated on basic welfare rights:

> *"[CFOS] just means that… you're dealing with the young person's needs rather than looking at it from an offender situation… it's about prioritising the welfare side of things… it's around stabilising, housing, and all of the other areas to get to a point there where a young person can actually start to reflect on their behaviour and kind of move on from it… classic example, [we're supervising a young person who's] 16 and in bed and breakfast accommodation, we've had two new offences over the last few weeks, erm in terms of the ECM approach and Children First approach we should be looking at first of all what his rights are as a child in terms of accommodation, in terms of support, that side of things… stabilising the accommodation and then moving up Maslow's Hierarchy of Needs in order to get to the point there where we're able to effectively address the offending."*
>
> OM1, Pengaron

Participatory rights – involving the child and (if appropriate) his / her family in decisions – were not mentioned by any interviewee other than Pengaron's Head of Service. For three of the managers and the four practitioners who offered an explanation of 'children first', a similar picture emerged. 'Children first' was seen as synonymous with addressing children's welfare deficiencies, through working alongside other agencies to 'fix' these deficits (i.e. by finding accommodation, work opportunities, etc.). Nowhere in these explanations did the child feature as a person with agency and choice (see also section 6.2.6, this chapter, on ECM). Moreover, for most the most part, practitioners and managers saw no contradiction between addressing welfare needs and sending a young person to court under breach proceedings and recommending some kind of punishment for breach offences. It was also clear that, in the practitioners' case, with two exceptions from Pengaron, even though they thought 'meeting welfare needs' was helpful and something they should be doing as YOT workers, they did not see this as a matter of securing children's fundamental *rights*.

6.2.3 Perceptions of 'risk' – to others

Another common justification for responding formally (i.e. by issuing warning letters and / or instigating breach proceedings) rather than informally to non-compliance was the staff's perception of the 'risk' the young people presented to others:

> *"If you've got someone high risk, there's a high risk of them reoffending… we've got to be extra vigilant that we make sure we respond to non-compliance… because at the end of the day, if they haven't complied and we've done nothing and they've gone on and committed another offence… well…"*
>
> OM6, Llanfadog

This 'risk'-based justification for breaching young people cropped up in interviews with four staff from each YOT (including all three operations managers). They identified the young person's risk of reoffending as a significant influence on their likelihood of responding formally to non-compliance. This was linked by many of the staff to their duty to 'protect the public', but also, as discussed in the following subsection, to concerns over their reputation.

The difficulties with predicting the likelihood of (re)offending have been discussed extensively elsewhere, as have the ethical quandaries arising from subjecting people to interventions that are designed to lower their risk of (re)offending, based on the presence of 'risk factors' (see Chapter 2, section 2.3.3). A primary concern is that the relationship between 'risk factors' and offending has not and cannot be proven to be causal. Notwithstanding these difficulties, it may be argued that providing targeted support for young people on the basis of 'risk factors' is morally justifiable and ethically unproblematic if the aim of the support is to improve their life chances and overall well-being. Where the primary aim of the support is to reduce (risks of) (re)offending, however, targeting people on the basis of 'risk factors' becomes more ethically questionable. By focusing on offending, the target population / individuals who receive the support are viewed primarily as 'offenders' or 'potential offenders', and success is measured in relation to their abstinence from offending. The harms associated with labelling and / or conceiving of young people as (potential) offenders have been well-established.

Consider, then, the ethical implications of using 'risk factors' as a basis not for providing support, but for deciding whether to breach someone for non-compliance. As this research and other studies have shown, breach proceedings often have a punitive

outcome: more hours of unpaid work / reparation, extended curfews, more onerous orders; even custodial sentences. The nature of the proceedings can also be harmful to the young people, not least by exposing them to yet another court hearing (an inherently child-unfriendly and often oppressive setting) and by potentially damaging their relationship with their YOT worker(s). Given that it is impossible to predict the likelihood of (re)offending, any decision to breach a young person due to a presentation of 'high risk' was, in fact, based on a perception of what the young person *might do*, not what they had done. In other words, rather than using breach solely as a response to 'unacceptable' non-compliance, it was used as a preventative tool.

This is problematic on two counts. First, by instigating breach proceedings against a young person, the YOT is accusing them of committing an offence: breaching a statutory order. If found guilty, the offence will be added to the young person's record and they might incur some penalties. As such, the YOT's decision to instigate breach proceedings should only be made if they are confident that they could prove to the court that the young person had committed the offence – i.e. failed *without a reasonable explanation* to comply with their order. It has already been mentioned that staff often felt pressured to breach despite believing that the young people had a good reason for failing to comply with their orders (see section 6.2.1 on *National Standards*). However, having to 'prove' the breach to the court was not something that overly concerned staff, simply because the young people rarely contested the charge (see subsection 6.5 of this chapter).

The second problem with using breach as a 'preventative' tool with young people identified as demonstrating a high risk of reoffending is that it only makes sense if the YOT believed that breaching the young people would either (a) deter them from reoffending or (b) prevent them from reoffending (by means of a custodial sentence). These two possibilities are considered in reverse order.

If a young person received a custodial sentence as a result of breach proceedings, then yes, any risk they posed to the public would be temporarily removed. Of course, the associated risks *to* the young person ought not to be underestimated, nor should the potential for the young person's likelihood of reoffending to increase after a custodial sentence – thereby questioning the 'public protection' argument as the 'risk' to the public would have been postponed, not eliminated, and is likely to have increased. In any case, the reality was that most BSO offences did not result in a custodial sentence. Out of the 85 breaches of criminal justice orders (BCJO offences) recorded in Pengaron between April 2014 and March 2017, only eleven resulted in a custodial sentence / recall for DTOs; in Llanfadog, the figures were 22 out of 133 BCJO offences. Moreover, the management of

both YOTs advocated a policy of never recommending custodial sentences to the magistrates, in recognition of the harmful consequences of incarceration for young people.[92]

As for the other scenario, that breaching a young person would deter them from reoffending, this was highly unlikely for two reasons. First, it assumes that the offences committed by young people in this research were the result of rational contemplation, whereas all the evidence from the case files of young people with a high number of convictions suggests otherwise. Second, the young people who were interviewed during this study consistently described a similar pattern in their change of attitude towards the courts: they all reported feeling scared or worried prior to and during their first few court hearings, but after so many years of court hearings and being 'in the system', they had become desensitized to it. They would either 'play the game' (e.g. by speaking politely and dressing tidily), 'play up' to the court (by swearing and / or laughing at the magistrates), or refuse to engage at all in the proceedings. This suggests that while using breach proceedings as a deterrent for further offending might work with the younger and / or less experienced children, it was unlikely to work with the young people who had an extensive history of offences and court hearings (such as the 'breach cohort' in this study).

By all accounts, then, it appears that young people who were perceived by the YOTs as having a high risk of reoffending were neither likely to be incarcerated, nor to be deterred from reoffending as a result of breach proceedings. The 'risk' or 'public protection' justification for breaching is therefore questionable not only from an ethical perspective but also from an empirical standpoint.

6.2.4 Reputation

Concerns over the 'risk' posed by young people were closely related to concerns by YOT managers for their reputation. Take the following quotations from an operations manager and the Head of Service in Llanfadog:

> *For those who just aren't engaging, regardless of whether breaching may re-engage them, it does become 'well you're on a court order and you're not doing it'. You know, there has to be* some *action, cos we are accountable to the court as well, so we have to let them know if there's a young person who's not engaging. If they*

[92] It is also fair to assume that the KPI of reducing the numbers of young people sentenced to custody influences this policy. Although, as discussed later in section 6.4, the lack of an explicit recommendation for a custodial sentence did not necessarily mean that such a recommendation was not implied in the phrasing of breach reports.

go back to court for another serious offence and they ask us 'how is X getting on with his order?' and we say 'well actually, he hasn't turned up for three weeks', they're going to be after us asking why we didn't bring him back sooner"

OM3, Llanfadog

"it's the defensible decision-making, isn't it. If you've got someone [who's not complying] and you decide not to breach them, and then they're in the community and they commit a very serious offence, then if we were scrutinised, we need to be very clear about why we didn't breach that young person."

HoS, Llanfadog

Both these statements were based on a hypothetical scenario: *what if* the young person committed a serious offence and, upon scrutiny, the YOT were found to have missed or failed to act on an opportunity to bring the young person back before the court for non-compliance? These comments betrayed a fear among the YOT management that in such a situation, they could be held accountable – at least partially – for 'enabling' the young person (by failing to restrict their opportunity) to commit the offence. As such, breach was used as a form of 'risk-averse' practice (risk to reputation). The likelihood of the YOT being blamed in such a situation is unknown, but its irrationality is clear: attributing blame to the YOT on this basis assumes that if the YOT had breached the young person, he would have been placed in custody. For reasons already discussed, such an outcome was an unlikely result of breach proceedings. The assumption that the young person's ability to commit the offence would be hindered by being in custody is also fallacious; while it may be true for some offences, it certainly is not true of 'violence against the person' offences.

Regardless of the irrationality of blaming the YOT for 'enabling' a young person to commit an offence, the fear of this happening was clearly present among the managers of both YOTs, and it was one of the factors they identified as being influential on their breach decisions. For one of the operations managers in Pengaron, concerns for the YOT's reputation extended beyond accountability to the court and the *Standards* to what the public would think of the YOT if they did not enforce court orders:

"You know sometimes you sort of delay the breach… But if you delay the breach and they don't engage, you know there has to be a line. And ultimately, it doesn't really matter what effect the breach will have on the young person: it does become

a process issue. Because if we are supervising someone in the community, and they are not engaging, we can't not take any action for a long period of time – we've got to maintain our reputation, otherwise people will start thinking that we're just letting kids get away with murder"

OM2, Pengaron

In this manager's view, the effect of breach proceedings on the young people was secondary to the importance of following procedure – the latter being crucial to maintaining a good public reputation. It was not only the managers who expressed concerns over the impact of breach decisions on the YOT's reputation. One of the practitioners in Pengaron spoke about the importance of the YOT's reputation in the local community:

"Thing is, if we're sayin' to people, to victims, 'trust us, Johnny's punishment is x, y and z, he's got to do 40 hours' reparation, he's coming here to YOS every week' and then we're just letting him get away with not doing anything, then people are not gonna trust us anymore… the courts won't either – we've got to show that we're a serious criminal justice body"

CM11, Pengaron

Common to all these statements is the characterisation of the young people in the hypothetical scenarios as being completely disengaged from their orders. In reality, cases of 'zero compliance' were extremely rare. Many of the managers and practitioners who were interviewed spoke frankly and often at length about how non-compliance was hardly ever a matter of 'all or nothing'. Indeed, 15 of the 16 boys in the breach cohort whose case files were reviewed had complied with many aspects of their orders before being breached. This is not to accuse those who made the above or similar statements of deliberately mischaracterising the usual circumstances of breach decision-making, but it is important to highlight how commonplace it was for interviewees (managers in particular) to use extreme case scenarios when justifying breaching young people.

Concern for reputation was particularly prominent in cases of non-compliance with electronically-monitored curfews. Five practitioners (two from Pengaron and three from Llanfadog) and all three operations managers were forthright about the 'added pressure' to instigate breach proceedings after non-compliance with an electronically monitored curfew. This was because of the involvement of the Electronic Monitoring Service (EMS)

in the process. The EMS monitors young people's compliance with their curfew and sends automated daily updates to the YOTs. For most orders, it is the responsibility of the YOT to decide whether and when warning letters should be sent as they become aware of violations. However, if the *only* requirement of an order is an electronically-monitored curfew, the responsibility for issuing warning letters for "first and second level less serious violations" falls to the EMS. This is so even though it remains the YOTs' decision whether to instigate breach proceedings (YJB, 2015:6).

This removal of decision-making from the YOT to the EMS in respect of the initial 'warning letters' raises significant concerns about the fairness of the process since the EMS cannot investigate the reasons for violations in the same way the YOTs can. This is likely to result in letters being sent for technical violations which do not necessarily constitute 'unacceptable' instances of non-compliance.[93] However, staff stated that even in cases where the responsibility for the whole enforcement process (including whether to send letters) lay with the YOT, they felt pressure to send letters / instigate breach proceedings in a way they did not with other forms of non-compliance (e.g. with supervision / reparation sessions). This was because they feared that if they did not, and the child continued to accumulate violations, the EMS may start to question whether the court order was being 'robustly' implemented.

Before moving on, it is worth pausing to reflect on the comment made by Llanfadog's Head of Service about 'defensible decision-making'. One might think that this principle ought to allay any fears about being blamed for deciding not to breach a young person, even if that person proceeded to commit a serious offence. It suggests that a decision can be made as long as the decision-maker is able to clearly justify and explain their reasons for making it (and that the decision does not violate any laws, statutory guidance or local policies). However, the Head of Service from Llanfadog regarded this principle an obstacle to rather than an enabler of deviation from 'procedure',[94] and as such thought it best (safer) to conform to the procedure.

Although this principle of 'defensible decision-making' was not cited in any other interviews, it was frequently mentioned during informal conversations with staff. It was particularly interesting to observe that the principle was only mentioned in relation to decisions *not* to breach young people – and never when discussing decisions *to* breach someone. There seemed to be a far lower 'defensibility threshold' for making decisions to

[93] This problem has been recognised in the recent White Paper on sentencing reform (Ministry of Justice, 2020) where it is proposed that all 'enforcement' responsibilities in relation to curfews be transferred to YOTs.
[94] The use of quotation marks around the word 'procedure' here is deliberate; recall that Llanfadog YOT did not have a breach procedure, other than for ISS.

proceed with breaching someone than for deciding not to instigate breach proceedings. Perhaps this would not be the case if YOTs anticipated having to prove the BSO offence at court, but as already mentioned (and see discussion in part 6.5), this was rarely necessary.

6.2.5 Responsibility

That young people needed to learn to take responsibility for their actions was another recurring theme which affected not only breach decisions, but in some cases, the level of support offered to the young people by their YOT workers. The reader will recall from Chapter 5 (section 5.3) that YOT staff used a variety of mechanisms to support children on their orders (e.g. giving lifts to appointments, flexibility with location of appointments and nature of work), but that these supportive elements were used to a greater or lesser degree, largely depending on the personal beliefs of individual case managers. Their views on personal responsibility seemed to be one significant influence on the degree of support they provided to the young people they supervised. For example, one case manager in Llanfadog justified his decision not to give young people a lift to appointments after the first two meetings at the YOT:

> *"They've got to take responsibility for themselves at some point… we can't just keep treating them like children"*
>
> CM5, Llanfadog

Irony aside, a similar sentiment was expressed by a case manager in Pengaron. He was not happy with the YOT's (informal) policy of giving lifts to young people to appointments – even though many of the young people involved with the YOT lived in areas with little or no public transport. In his case, however, he was compelled by his manager to give lifts to the young people. In Llanfadog, however, there was very little managerial oversight of practitioner decision-making, and this allowed case managers to act as they saw fit.

The crucial point here is that this view of teaching young people to 'take responsibility' completely ignored the circumstances which had led them to their involvement in the YOT: i.e. (in many cases) violations of their rights and deprivations of entitlements through service failure. Rather than emphasising the accountability of services, a central principle of the 'children first' philosophy articulated in Chapter 1 (section 1.4), blame was placed squarely on the shoulders of the children. In other words,

the children were 'responsibilised' for their actions which had arisen in part due to the failures of services.

That said, the practitioners who were opposed to giving lifts and indeed providing other forms of support to young people were a very small minority in both YOTs. Staff's beliefs about personal responsibility became much more relevant in relation to breach decisions – especially in deciding what constituted 'acceptable' behaviour. The variation in levels of tolerance to 'rude' or 'aggressive' behaviour between different staff was surprising, with some accepting it as 'part of the job' and trying to find constructive ways of addressing it while others took personal offence from a rude gesture. The staff who fell into the latter category often made appeals to their expectations from their own children; for example, when discussing a recent warning which had been issued to a young person as a result of 'unacceptable' behaviour, his case manager stated that:

"I wouldn't let my child talk to anybody like that"

CM6, Llanfadog

It was unexpected to hear staff applying the same behavioural standards to which they held their own children accountable to the young people whom they supervised, especially as they were fully aware of their often incomparable life experiences and circumstances. Stranger still was the realisation that some of the staff thought that issuing a formal warning – thus propelling a young person towards another court hearing – was an appropriate response to (e.g.) a verbal attack. Clearly, if their own children verbally abused them, they would not consider it a matter for the courts.

Some staff stated that they tended to be more lenient with the younger children who failed or forgot to turn up to sessions, but thought that once a child was fifteen or sixteen years old, they had to start taking responsibility for their actions. This reasoning was especially prominent when discussing young people who were seventeen years old and / or approaching their 18th birthday. Six different staff members who were interviewed (four from Pengaron and two from Llanfadog) stated that they were more likely to breach these young people after three instances of non-compliance and / or to be stricter in their interpretation of 'acceptable' non-compliance. This was because they felt that they must encourage the young people to take personal responsibility –

"because they won't get away with it [non-compliance] in probation"

CM2, Pengaron

It was clear that they thought they were helping the young person by 'preparing' them for the 'reality' of probation, which they characterised as having far less flexibility than YOTs around responses to non-compliance. Even though many of these young people would indeed end up transferring to probation, the assumption itself is problematic, as is the altering of breach practice based on this assumption. In fact, young people could end up transferring to probation only *because* they'd been breached; had they not been breached they could have finished their order under the supervision of the YOT.

The most emphatic advocate for personal responsibility was of the view that:

> *"They've [the young people] done something to someone else – it's all very well talking about their rights, but they've violated the rights of someone else! Otherwise they wouldn't be in the system! So yeah, you've got to take responsibility for that…"*
>
> CM13, Pengaron

For this case manager, complying with their orders was the only way in which young people could demonstrate that they were 'taking responsibility' for their actions. If they failed to comply with their orders, they had to be held accountable. Enforcing the order via breach proceedings was the method for doing so. It is perhaps no coincidence that this case manager consistently had a far higher number of supervisees in custody than any other case manager in either YOT.[95]

6.2.6 Enhanced Case Management

The *Enhanced Case Management* (ECM) approach for working with young people was one of the most widely discussed topics in the YOTs during the first phase of data collection. At this stage, Pengaron staff were attending training on the approach and its theoretical underpinning, whereas Llanfadog had already started to implement the approach. By the second phase of data collection, both YOTs were implementing the approach.

[95] This reflects the New Labour mantra of 'no rights without responsibility'. It is interesting to think that YOTs were created in the crucible of New Labour thinking around conditional rights. This is, of course, one of the theoretical presuppositions that CFOS – and the Labour government in Wales – denies.

Initially, many of the staff in Pengaron anticipated that the implementation of the ECM approach would have a significant impact on their breach practice. There was a perception among almost all the practitioners that one implication of taking an ECM approach with a child would be that they would not be allowed to instigate breach proceedings, even if the child was persistently failing to comply with the order, as this would risk jeopardizing the achievement of 'stability' and 'security'. There were mixed views about this, with one of the case managers hopeful about the prospect of putting an end to the practice of breaching, while the others were more dubious:

> *"[if we can't breach them] we'll be letting them get away with murder… almost literally"*
>
> CM13, Pengaron

> *"I think that's how it should be [not breaching]. When you breach a young person, it's like you're giving up on them. I think ECM will be a God-send"*
>
> CM10, Pengaron

However, by the beginning of the second phase of data collection, when the ECM approach had been implemented in Pengaron for approximately nine months, some of the practitioners had developed a different understanding of the approach and its impact on breach practice. Some of those who previously thought that it would affect their breach practice had changed their mind. For example, one of the case managers who previously thought that a "no-breach" policy was intrinsic to the ECM approach now realised that the YOT's breach policy had remained the same and was equally applicable to ECM and non-ECM cases. What *had* changed, he identified, was the staff's expectations of young people on ECM. He noted that the 'goals' of the orders for young people on ECM were better tailored to their individual circumstances, taking into account their mental, intellectual and emotional capacity and maturity as well as their needs and strengths. It was therefore less likely that a young person would fail to comply with their order and / or that instances of non-compliance would be deemed 'unacceptable'.

Another of the case managers, the one who had initially hoped that the introduction of ECM would eliminate breach practice in the YOT, was disappointed that this had not been the case. However, she did think that some of her colleagues were breaching less because they were focusing more on building and sustaining positive relationships with the young people. For the case manager who had thought that the ECM approach would enable

children to "get away with murder", the nine months which had elapsed had done little to change his view. To the contrary, seeing some of his colleagues 'pussyfooting' around the issue of breach, as he put it, had served to reinforce his initial view.

In Llanfadog too, there were mixed views among the staff about the ECM approach. Some staff were content to 'go along' with it and were interested in the psychological explanations of the impact of childhood trauma, but felt that its implication for their practice with the young people (i.e. focusing on building a strong relationship) was limited, as it was something they had always done:

> *"Everything ECM says we should be doing, we have or should have been doing anyway. It's not rocket science, it's not a new concept, it's just got a label now!"*
>
> CM5, Llanfadog

Others were more positive and saw opportunities to be more creative and flexible in the way they worked with young people. One case manager was especially pleased at the introduction of ECM as she felt it gave her a legitimate justification for not subjecting the young people to interventions traditionally viewed as compulsory, such as 'offending behaviour work' and 'victim empathy work'. For her, completing worksheets on these topics was purposeless. She did not believe that people can be taught how to be empathetic. Rather, the key to reducing young people's engagement in criminal activities was placing them in the company of a positive role model. Such a role model should demonstrate empathy, rather than lecture the young person on why it's important to be empathetic:

> *"[ECM] gives us the freedom to work with young people in a way that involves them a lot more without being criticised so much by other people."*
>
> CM7, Llanfadog

The managers in Llanfadog were also positive about the opportunities presented by the roll-out of the ECM approach. One expressed having much more confidence to work outside the *National Standards* if ECM became the norm, something he thought was much needed in cases where the children had a particularly low level of wellbeing:

"ECM gives us license to divorce the criminal side of [their] behaviour from the more pressing welfare concerns… [ECM] allows much more flexibility in relation to management of [their] order."

OM3, Llanfadog

Most practitioners in Llanfadog believed that ECM had affected their breach practice. Indeed, the YOT's case management system showed that not one of the young people who were supervised under the ECM approach had been breached since being referred to the ECM panel, despite there being numerous instances of what would normally be considered unacceptable non-compliance. Many of the staff believed that employing the ECM approach gave them a legitimate reason for holding back on breach action. One practitioner stated:

"I could have taken [young person] back to court about 6 times [for non-compliance]. But as long as I evidence what I'm doing, and I've got reasons for it, then I'm allowed to do it."

CM8, Llanfadog

Another practitioner felt that although they had always tended to be lenient with the young people, they now felt more confident in their decisions to give further chances to comply with the orders:

"If one of my kids is ECM, I'd be confident now to stand up in court and argue for why I didn't breach and why I made other decisions."

CM6, Llanfadog

In both YOTs, there was a strong feeling among some practitioners that the introduction of the ECM approach could serve to legitimise any decisions not to enforce orders or issue formal warnings. However, the practitioners who expressed these views tended to be the ones who had also stated that they already deviated from a 'three-strikes' breach policy. Those who had stated that they robustly implemented a 'three-strikes' policy tended to oppose the ECM approach. These practitioners thought that the ECM approach, by prioritising the child's welfare needs over addressing their 'offending behaviour', make

their role indistinguishable from that of a social worker (ironically, all but one of these practitioners were social work-trained – see discussion on 'professional identity' in Chapter 7, section 7.4.2). They felt strongly that the YOT's focus should be reducing reoffending:

> *"The truth is, no matter how hard you try, some of these young people are never gonna get far enough up in Maslow's Hierarchy… so what do we do then? We're not supposed to do anything to try to stop them from offending? That's what we're here to do – stop them from reoffending… we're not their social workers"*
>
> CM13, Pengaron

Clearly, this practitioner was not on board with the theoretical underpinning of the ECM approach. He did not think that the YOT should wait until the young person was 'ready' to address their views about / attitudes towards offending and apparently did not consider addressing welfare deficiencies as falling within the remit of 'youth justice' workers (more on this in Chapter 7, section 7.4.2). Although his comment may be understood as a rebuke of what he perceived to be the abandonment of his 'expertise' or 'domain' – addressing offending behaviour – it also reveals a legitimate concern about context in which the ECM approach was operating.

The case manager's pessimism about some young people never being 'ready' (i.e. having a sufficiently high level of wellbeing) to contemplate changing entrenched patterns of offending is not unfounded. Take for instance the profound difficulties YOT staff often faced when trying to ensure that Children's Services secured accommodation for young people who were either in the care system or otherwise unable to live at home. Staff in both YOTs were very often frustrated by the placement of young people in unsuitable or even unsafe accommodation (e.g. Bed and Breakfast accommodation where adult drug users/addicts and those recently released from prison were known to live). It is understandable that this case manager thought that if stable, safe accommodation could not even be guaranteed for the young people, how could the rest of the 'hierarchy of needs' be secured? This emphasises the importance of the context in which YOTs operate: to successfully achieve socially just outcomes for children, they are reliant on other services meeting their duties to the children.

His comment also raises the question of whether the staff at the YOT are the most appropriate people to be building a 'key relationship' with the young people, given that the

purpose of the relationship is to be long-term – unlike, ideally, the young people's involvement with the YOT. While both YOTs regularly convened meetings with other key people in the young person's life (e.g. social worker, education tutor), and while in a minority of cases, a non-YOT worker took the lead on building a 'key relationship', more often than not, out of all the professionals or agency workers involved in the young person's life, the YOT worker had the best relationship with them. While this reflects well on the YOTs, it is far from ideal. Many of the staff who were eager about the ECM approach expressed significant concerns about the transition process when the young people finished their orders, noting that the level of support given to the young people during the intervention needed to be (but was not) maintained after they finished their order. To mitigate against this reduction in support, some YOT workers in Pengaron continued to meet with the young people after they finished their order, on a voluntary basis. While this was admirable and encouraging, it clearly is not sustainable; it is also a real indictment of availability/accessibility of 'universal' services in the area.

Among those in favour of the ECM approach, the referral process also raised concerns. They were particularly concerned about the fact that the decision to refer a young person rested with the case managers, and that if a case manager did not favour the approach, then none of the young people on their caseload would get the opportunity to benefit from it:[96]

> *"There's a panel that decides whether the young person who's been referred is eligible, and that's based on how many ACEs they've got, but that only happens after the case manager has decided to refer. It all depends on the views of the case manager, whether the young person goes through or not. Sometimes that's wrong... It needs to be more objective."*
>
> CM6, Llanfadog

The eligibility criteria for the ECM approach was also problematic. During the data collection phase(s) of this study, both YOTs employed an eligibility criterion of four or more adverse childhood experiences (ACEs). In other words, in order to 'qualify' for this more understanding, individually-tailored and trauma-informed approach to statutory order supervision, the young people had to have experienced – and be known to have experienced – at least four adverse experiences during their childhood. The warnings from the Children's Commissioner for Wales (2018) – in particular those against using ACEs as

[96] This was less of a concern in Pengaron, where managerial oversight of such decisions was more robust.

a ‘gatekeeper’ for accessing services and the use of crude ‘ACE scores’ to measure trauma – appeared not to have been heeded. Moreover, the problems with the list of ACEs (or rather, with what’s *not* included on the list) and their undue emphasis on adverse experiences *within* the family while ignoring wider socioeconomic and cultural / structural influences have been well-documented (e.g. Treanor, 2019; Walsh et al., 2019). It was also clear that, in practice, ACEs were conceived as ‘risk factors’ for offending, rather than violations of children’s fundamental rights and therefore in need of redressing. The distinction is important because the latter implies a duty on services to provide for children because they have an unconditional right to those services; while the former implies that services ought to provide in order to reduce the likelihood of reoffending.

One final point ought to be made before moving on, which relates to the value of the clinical psychologists and their reports. The case manager quoted above who expressed frustration about being prevented from doing ‘offending behaviour’ work was especially infuriated after reading a report from the clinical psychologist about one of the young people whom his colleague was supervising:

> *“I’m told that [young person] has an emotional age of a four-year-old and an intellectual age of eight. Then what the hell is he doing in the criminal justice system?! If he’s functioning at the level of a four or an eight-year-old, then surely he can’t be held criminally responsible! If that’s the case, what on earth are we doing here?!”*
>
> CM13, Pengaron

Although this case manager’s scorn was for the report (in his view, it was the report that was ridiculous, not the fact that a young person with such emotional and intellectual immaturity was being held criminally responsible), he highlighted an important contradiction which permeates the Youth Justice System: that of attributing criminal responsibility to children who are considered both from a psychological and a legal perspective to be too immature to take on full responsibility for other aspects of their lives. The value of such reports, therefore, could extend beyond their impact on the cases of individual young people; they have the potential to be used to highlight the untenable nature of the justifications for maintaining such a low age of criminal responsibility.

However, the apparent benefit of having a clinical psychologist involved – insofar as some practitioners and managers thought it enabled them to justify a different approach (and by implication, reduce formal breach decisions) – raises a more fundamental question

about the dilution of professional youth justice expertise. It could be argued that relying on a non-YOT actor to justify decision-making outsources responsibility for decision-making to external 'experts' – thus discouraging youth justice practitioners from building and applying their expertise, knowledge of the law, evidence-based practice methods, *etc*. – which are arguably essential qualities for the implementation of a more progressive youth justice.

6.2.7 'The YOT knows best' (Referral Order Panel Members and magistrates)

Just as the views of the YOT staff about the influences on their breach decisions were sought, so were those of the magistrates and Referral Order Panel volunteers. By law, ROP volunteers have a significant degree of authority in relation to the design, monitoring, amendment, early revocation, and breach of Referral Orders. They are tasked with the responsibility of:

- co-producing a 'contract' with the young person (although as already discussed, in practice, they tended to dictate the content of the contract);
- monitoring the young person's progress with the requirements of the contract and making amendments to the contract if and when requested by the young person or their case manager (although none of the young people who were interviewed seemed aware of their right to request a change to the contract);
- deciding whether to refer a young person back to court for the early revocation of the order if they have made significant progress; and
- deciding whether to instigate breach proceedings (i.e. authorise the YOT to make an application to return the case to court) if the young person fails to agree to / sign a contract or fails to comply with its requirements.

The legislation – *Powers of Criminal Courts (Sentencing) Act 2000*) – and statutory guidance – *Referral Order Guidance* (MoJ and YJB, 2015; 2018) – clearly state that the decision to return a young person on a Referral Order to court under breach proceedings is the Panel members' to make. The factors influencing Panel members' decisions, therefore, were highly relevant to this study. Some have already been shared in previous subsections – those who were interviewed spoke of the child's best interest, the child's duty to take responsibility for their offences, and the Panel members' own duty to make decisions which would not undermine the public's confidence in the process.

However, it became clear both from observations of Panels and from the interviews with Panel members that, with one exception, their decisions were most heavily influenced if not dictated by the YOT case managers. When asked to describe circumstances under which they would send a young person back to court under breach proceedings, all bar one of the Panel members stated that they would act on the case manager's advice / instruction and that they would not initiate breach proceedings unless advised to do so by the case manager:

> *"Usually, if there's a problem, the case manager will come in before the panel starts and say, 'well look, he hasn't been doin' this, or that, I think we need to breach him', and then usually we'll say to the young person 'well look, you haven't been doin' your order so we're going to have to send you back to court' and then we'll usually get a rude response so we'll tell him he's goin' back to court"*
>
> ROPV1, Pengaron

That most Panel members did not feel confident enough to challenge the advice of the case manager – even if they felt the advice was wrong – questions the purpose of the Panel. If the decision is always made by the YOT, what is the point of the Panel? As advised in the Lammy Review, 'local justice panels' ought to hold services to account (including the YOT), as well as the child, by checking not only whether the young person had been complying with the contract but also whether the YOT had provided sufficient support (see recommendation 18 in Lammy, 2017:43).

That said, given the quality of some of the Panels, deference to the YOT was not necessarily undesirable. As identified by four of the Panel members, the case managers know the young people far better than any Panel member:

> *"The YOT knows best… sometimes we don't even see the same young person more than once, they get different panels all the time… we get the report to read but we can't get to know the young person based on that, not like the case manager knows them"*
>
> ROPV4, Llanfadog

It follows, then, that the case managers would be better placed to know what decisions are in the young people's best interest (although as discussed, this was not always the primary

or a significant influence on YOT staff's breach decisions, and there were varying interpretations of 'best interests'). The importance of case managers having a strong voice in the Panel proceedings was highlighted during one Panel observation where the Chair of the Panel embarked on a 'power-trip'. Without the case manager's advocacy for the young person, it is likely that they would have been returned to court for breach proceedings based on their 'attitude' during the Panel meeting. Conversely, the lack of confidence among most Panel members to challenge the YOT could enable case managers who were not playing their part to support the young person to continue along those lines, effectively placing all the responsibility on the young person (and if present, a family member) to complete the order.

The one Panel member who stated that he did challenge the YOT and makes decisions based on what he thinks is right gave the following example:

> *"They [case manager] brought him back and wanted to revoke the order early. I looked at the contract and asked him what he'd done; he hadn't done any of the reparation and he couldn't tell me anything he'd done! … Well obviously I weren't havin' none of that! Sometimes the YOS are really bad at this – they say 'early revocation' but the kid hasn't done anything!"*
>
> ROPV3, Llanfadog

In this case, according to the Panel member, the case manager had tried to let the order expire without making much effort to engage with the young person. There were a handful of examples in Llanfadog found in the young people's case files which seemed to corroborate this Panel member's view: young people on Referral Orders of six months or less where the only contacts recorded were either face-to-face appointments or phone calls once every week or two weeks. This is not in itself problematic – the case managers may have had good reasons for requiring little involvement from the young people. However, there were no reasons recorded as to why these handful of young people did not (and were not expected to) fulfil the requirements of their Referral Order contracts; and when one case manager was asked about two young people whom he had previously supervised on Referral Orders, he stated that the reason they'd done no reparation work was because the YOT did not have anybody to undertake the work with the young people at the time. While this may have provided these young people with a 'lucky escape' (reparation activities in Llanfadog were felt by the young people to be stigmatising and/or pointless), it was

nonetheless a failure on the part of the YOT to observe *their* obligations to the young people.

Magistrates also often listened to and acted on the YOT's advice, on the basis that they trusted the YOT to know what was best for the young people. This was reflected in the frequency with which the recommendations made by the YOTs in the breach reports which were analysed were implemented by the magistrates. However, in contrast to the majority of the Referral Order Panel members, magistrates tended to concur with, rather than defer to, the advice of the YOTs. The four magistrates who were interviewed each agreed that they tended to implement the YOT's advice, but that they did challenge it and make alternative sentencing decisions if they disagreed with the advice or thought it conflicted with their sentencing guidelines. The three magistrates in Pengaron stated that they were most likely to go against the YOT's advice in cases which had reached the threshold for a custodial sentence:

> *"They [the YOT] don't recommend custody for any young person any more… but clearly we will have cases which have to go to custody – where there is no other option. So yes, in those circumstances, we would definitely be going against the YOT's advice"*
>
> MAG3, Pengaron

6.3 Case files – breach decisions in context

Some of the themes identified above, such as 'responsibility', 'best interests', and the *National Standards,* were evident in many of the breach decisions recorded in the case files. However, by examining the context in which instances of non-compliance arose, a range of other factors which had an impact on breach decisions were identified. These included: different interpretations of 'unacceptable' behaviour among practitioners; failures to investigate the reasons for violations of electronically monitored curfews; case manager perception of responsibilities to the young person; legislative constraints; and quality of communication.

6.3.1 Interpretations of 'unacceptable' behaviour

This is best captured by the contrasting decisions made in the cases of Harry and Nathan (both from Pengaron). Both had histories of instability and 'looked after' status, as well as

many other adversities. Nathan had multiple instances of non-compliance recorded on his file (primarily failures to turn up to appointments). This 'behaviour' was justified on the basis of the difficulties he was experiencing, which were characterized as 'exceptional circumstances' which warranted the suspension of *National Standards* in order to avoid breach and to focus on improving his circumstances.

By contrast, Harry's first formal warning for 'unacceptable' non-compliance arose as a result of lighting a cigarette in a YOT worker's car. The final (second) warning was given after breaching his curfew while out with his friends. After receiving this warning (which threatened breach action and a possible custodial sentence), Harry absconded, missed his compliance panel and violated his curfew for three nights in a row. He was reported as a 'missing person'. Eventually he was picked up by the police. The YOT tried again to convene a compliance panel but Harry refused to attend. He was subsequently breached based on his curfew violations, and his case manager recommended to the court in the breach report the imposition of another month's curfew –

> *"to punish him for the breach"*
>
> (Quotation from Harry's first breach report)

Clearly, while Nathan's non-compliance was 'justified' based on the difficulties he was experiencing, the same standards were not applied to Harry (by a different case manager). The decision to 'suspend *National Standards*' and focus on improving Nathan's circumstances demonstrated application of the 'children first' principles of 'doing no harm' and acting in his 'best interests'. By contrast, the decisions made by Harry's case manager to send a warning letter for 'unacceptable behaviour'; to instigate breach proceedings despite significant welfare concerns; and to recommend to the court that he should be *punished* for his non-compliance, were completely contrary to these principles and overarching aim of 'children first'.

6.3.2 Failure to investigate reasons for curfew violations

The tendency among staff in both YOTs to feel more pressure to instigate breach proceedings in cases of violations of electronically monitored curfews (EMC) has already been mentioned (section 6.2.4). An examination of the young people's case files supported this finding, but also revealed a more fundamental issue in Llanfadog with the way in which minor violations (i.e. those less than two hours) were recorded.

The first problem – a greater tendency in both YOTs to breach for EMC violations despite reasonable justifications for the violations – is best illustrated by what happened to Harry (see previous section) after the court imposed a one-month curfew extension as a punishment for the original breach conviction. Within a month of the breach hearing, Harry had violated his curfew again four times. One of these violations occurred because he had stepped outside the hostel to which he was tagged during his curfew hours in order to smoke. Harry justified the other violations stating that he felt unsafe in the hostel, which was well-known for accommodating older adult offenders:

> *"It's not fair… they put me in a shit hostel full of crackheads… I said 'I aint stayin' there'… it's the* worst *one I've ever been in. I been in there before for… eight days. And my… police were there* every single night*. And that weren't even because of me… I come back, everything was smashed up, blood everywhere"*
>
> Harry, Pengaron

Harry's view of this particular hostel as being unsafe was supported by other young people who had been placed there (e.g. Blayne – see quotation in Chapter 5, section 5.2.2.1) and by many of the staff at Pengaron. Despite the protestations of the YOT, Children's Services continued to use this B&B as temporary accommodation for young people as young as 16 years old. Yet although the problems with the accommodation were recognised by his case manager, these violations were recorded on his breach report as examples of 'unacceptable' instances of non-compliance. Rather than taking Children's Services to court to hold them accountable for failing to place Harry in safe accommodation and for putting him at risk of harm, Harry was taken to court for breaching his order. This is in complete contrast to the 'children first' principles of service accountability, doing no harm, and acting in the child's best interests.

The other issue in relation to the EMC was a failure by case managers in Llanfadog to investigate every violation recorded by the EMS. While the reason for major violations (two hours or more) were sought by the case managers, it was commonplace to find references in breach reports to multiple minor violations which, together, accumulated to more than two hours (the point at which a warning letter may be sent). However, there was no mention of these minor violations in the young person's case notes, and no evidence to suggest that the reasons for them had been investigated. Attention was only paid to these minor violations after they had accumulated to a total of two hours or more, at which point a warning letter was sent informing the child that they risked being returned to court for

breach. By contrast, in Pengaron, consideration was given to every single violation, no matter how minor. If an acceptable reason was given for a violation, it would be effectively struck from the curfew violation 'tally'.

6.3.3 Responsibilities to the young person

Kian's case (Llanfadog) highlights how the perception by case managers of their responsibilities to the young people could affect their breach decisions. Kian was breached after failing to attend four successive supervision sessions at the very beginning of his order. The circumstances, however, were not so straightforward. Kian had, in fact, turned up to his first supervision session with his case manager, despite stating at court when he received the sentence that he would not. He turned up, only to be informed that his case manager had gone on holiday and that he would have to wait half an hour to see the 'duty' case manager. Kian refused to wait, and subsequently refused to attend until his case manager came back. When his case manager returned, he breached him for four 'unacceptable' failures to comply. This demonstrated double standards: while Kian was expected to inform his case manager of any absences, the case manager did not think that he had a corresponding obligation to inform Kian of his absences (or of any change to his supervision plan / worker).

6.3.4 Legislative constraints

The circumstances of Liam's breach (Llanfadog) exemplify the potential impact of legislative constraints on breach practice. Liam was breached for refusing to agree to a Referral Order contract. He had originally been sentenced to a 9-month Referral Order which was later extended to 12 months (the maximum length permissible by law) due to a further offence. While he was on the order, he committed yet another offence. The magistrates thought that the best option for Liam was a Referral Order, but they could not extend the current one as they had already extended it to its upper limit. Instead, they decided to impose another 4-month Referral Order which he would start immediately after finishing the current one. Due to the good progress he was making, his case manager decided to apply to the Panel to revoke the current Referral Order early; in that way, he could get started on the new one sooner and finish both within 12 months. The Panel agreed; and Liam attended a 'final Panel' for the current Referral Order, whereupon, after congratulating him for doing so well, the Panel members immediately turned their

attention to setting up a 'contract' for the new Referral Order. Liam was confused as he thought the 'final Panel' meant that he was no longer required to attend the YOT. He left the room and subsequently refused to attend a new 'initial Panel'. While this clearly indicates a weakness in communication (see next subsection), it also reflects some constraints in the legislation. The case manager's intentions in revoking the order early reflected her concern for Liam's best interests; but she had no choice but to ask the Panel to agree to return Liam to court for breach proceedings when he refused three times to attend a new Panel. This situation might not have occurred if the legislation had allowed the magistrates to extend the Referral Order again – thus negating the 'need' for a new contract to be developed.

6.3.5 Quality of communication

Both Liam's and Kian's cases were clearly affected by poor communication. Another example of this was found in Chris's case (Pengaron). He was on a Referral Order and appeared as if he was on track to finishing this Order successfully – he had two months left when his case was first reviewed. However, one month later, he appeared to suddenly disengage with the order – refusing to turn up to any appointments / sessions. Breach proceedings were instigated, and the hearing attended by this researcher. The reasons for his sudden 'disengagement' soon became clear: he thought that the Order was due to finish one month earlier. As far as he was concerned, he had completed the Order. His case manager had tried to explain to him that the Order started on the day of the initial Panel, not on the day of sentencing (a month had elapsed between sentencing and the initial Panel), but Chris was adamant that he had 'done his time'.

Evidently, neither the court who imposed the order nor his case manager had ensured that he understood that the period of the Referral Order did not start until the contract had been developed and signed. Despite his case manager's attempts to encourage him to finish the Order, Chris refused. After issuing three formal warnings, his case manager informed him that she was instigating breach proceedings. He was duly taken back to court. While the court took into account this misunderstanding and allowed his order to continue without imposing any penalties, they warned him that he must comply with his case manager's instructions for the whole month, otherwise he would be brought back in front of the court and could be resentenced – which would mean going to probation as he was a few days away from his 18th birthday.

6.3.6 Brief reflection

While it was not always possible to identify the rationale behind breach decisions in the case files, it was clear that the decisions to breach had the *effect*, if not always the intention, of placing sole responsibility on the children for their failures to comply with the orders. This was despite the fact that some instances of non-compliance arose based on failures by the YOT / magistrates to explain the requirements to the young person; sometimes by over-zealous interpretations of 'unacceptable' behaviour; by a failure to investigate the reasons for curfew violations (Llanfadog only); and/or by a failure by case managers to uphold their responsibilities to the child. What the case files highlighted more than anything was the vast range of decision-making by practitioners – i.e. the scope to exercise 'professional discretion'. This is elaborated in Chapter 7 (see section 7.3).

6.4 Breach Reports

A random sample of 16 breach reports from each YOT were analysed to obtain the following information: the reasons given by the YOTs for instigating breach proceedings (i.e. the 'unacceptable' instances of failures to comply); the YOTs' recommendations to the magistrates as to the most appropriate outcome; and the rationale, or justification, by the author of the report for making those specific recommendations.

In Pengaron, each report followed the generic template developed by the YOT. The author was expected to give details of the failures to comply; any previous non-compliance; the progress made on the order; and the recommendations made by the YOT for an appropriate outcome. While none of the reports deviated from this template, some authors would include much more detail in the section entitled "Progress and Achievements in Relation to the Requirements of the Order" than others.

In Llanfadog, no generic template had been developed by the YOT. As such, the structure, format and information contained in breach report varied according to the author. That said, each report detailed the failures to comply (though not always the *circumstances* of the non-compliance); any previous non-compliance with statutory orders; and recommendations for an appropriate outcome. In Llanfadog, too, some authors included more detail in relation to the young person's progress with their order and their achievements. In both YOTs, the reports which placed less emphasis on the young person's progress and achievements also tended to adopt retributive language such as the need to 'punish' or impose 'appropriate punishment' on the young person.

In both YOTs, the most commonly cited instances of 'unacceptable non-compliance' were curfew violations, closely followed by missed supervision sessions. In most reports, between two and 6 instances of unacceptable 'failures to comply' were cited, which showed that the so-called 'three-strikes' policy was not consistently employed. Missed appointments were rarely cited as the sole reason for instigating breach proceedings, unless the young person had repeatedly failed to attend the initial Referral Order Panel.

The language used by report authors in the 'recommendations' section was surprisingly passive in both YOTs .[97] Often, and especially where a custodial sentence was a possibility, the authors chose to inform the court of the options available to them rather than expressing an explicit preference. This was mostly accompanied by a statement of the YOT's willingness to continue to work with / support the young person. Given that the report author was usually the case manager and therefore had a vested interest in the court outcome, it seemed strange to pass by the opportunity to exert influence on the court's decisions by failing to make a case for a preferred outcome. When questioned about this, three case managers in Pengaron and two in Llanfadog stated that this approach was commonly employed when they felt that the young people had exhausted all opportunities in the community such that a custodial sentence was inevitable. By failing to make a case for the child to remain on an order in the community, while simultaneously making a statement such as "at this juncture, the court may feel that the only remaining option is to sentence [young person] to a period in custody", they were implicitly advising the court to impose a custodial sentence while still adhering to their local policy of never recommending a custodial sentence.

The most common recommendation made by the authors in both YOTs was for the order to continue and for the court to reiterate the importance of compliance to the young person. This highlighted how their primary objective was to try to 'enforce' the child's compliance, rather than impose punishment. Again, this places sole responsibility for compliance on the child. However, sometimes, particularly for second or third-time breach offences, this recommendation would be accompanied by a recommendation for extra hours of reparation or unpaid work to be imposed (although as previously discussed, the unpaid work requirement was rarely used by magistrates in Pengaron). Only three of the reports in Pengaron and four in Llanfadog included a recommendation for the Order to be revoked and for a more onerous order to be imposed; and only one report in both YOTs recommended that the current order was revoked in favour of a less onerous order. Neither

[97] In most but not all reports.

YOT explicitly recommended a custodial sentence, although as discussed above, a custodial sentence was sometimes implied.

The rationale for making the recommendations differed primarily according to how many times a young person had previously breached the order: first-time breaches tended to be accompanied by a recommendation to 'reinforce the importance of compliance', while subsequent breaches tended to include an element of punishment too. However, there was also a marked difference between some authors – with some clearly favouring a more punitive approach and others emphasising the difficulties the young people were facing.

Generally, breach reports seemed to be lacking in detail, especially when compared to pre-sentence reports. Assuming a young person pleads 'not guilty' to the BSO charge, the YOT would have to prove that the young person failed "without reasonable excuse" to comply with the order (see Chapter 2, section 2.4.3). Given that the quality of engagement between the magistrates and the young person and (if present) their parent / guardian was often poor (see Chapter 5, section 5.2.4.1); that the quality of the solicitors appeared to be highly variable (often poor – see next subsection); and that the magistrates rarely asked any questions of the YOT representative in court; the main source informing breach sentencing decisions were the breach reports. It follows, then, that they need to be much more comprehensive if magistrates are going to be able to consistently make informed decisions.[98] It was difficult to see how the magistrates could make an informed judgement as to the 'reasonableness' of the failures to comply based on a report of barely two pages.[99] There may of course be instances where a minimalist report is more appropriate, but report authors should always consider whether the content of their reports adequately represent the best interests of the young people.

Unlike pre-sentence reports, there was no feedback system for breach reports. This meant that staff didn't know how helpful their reports were, nor why magistrates sometimes did not implement their recommendations. In Llanfadog, a further concern was raised by some practitioners about the lack of consistent managerial oversight of the breach reports (or decision-making in general, for that matter), such that reports were not consistently quality-assured nor counter-signed by a manager.

[98] Of course, the magistrates could refer back to the pre-sentence reports, but they might be out-dated, irrelevant and too risk focused for the purpose of a breach hearing. Arguably, PSRs should not be re-used at all as they are written for, and only relevant to, a specific court appearance at a given point in time.
[99] Again, this refers to most but not all reports.

6.5 Court: breach proceedings, decisions, and outcomes

Young people in court for breach offences overwhelmingly admitted 'guilt'. This meant that the threshold for being convicted of a BSO offence – proving, to the criminal standard, that the non-compliance occurred "without reasonable excuse" – rarely had to be reached. This is particularly concerning because many staff in both YOTs stated that they sometimes instigated breach proceedings despite there being 'good reasons' for the young person's non-compliance – reasons which would most likely constitute a "reasonable excuse". When asked in interview why they pleaded 'guilty' to the BSO charges, three of the young people in Pengaron and four of those in Llanfadog stated that they had been told to do so by their solicitor, and the other young person in Pengaron stated that it was 'just easier' to do so.

During the breach hearings which were observed (two in Pengaron, three in Llanfadog), the magistrates made no attempt to scrutinise the circumstances of the failures to comply, nor the YOTs' efforts to promote the young person's engagement with the order. However, even if they had questioned the YOT in court, they would most likely have been unable to gain satisfactory answers in Llanfadog. This is because Llanfadog had a dedicated 'court team' – staff in the YOT without any case management responsibilities who were responsible for representing the YOT at court. It was very rare for a case manager – the only person in the YOT with sufficient knowledge of the details of the case and the circumstances of the child – to attend court. Although Pengaron had a dedicated court officer too, it was much more common to see the case manager accompanying the young person to court in Pengaron.

In the breach hearings which were observed, there was also no scrutiny of schools' justification for excluding young people; the Local Education Authority's failure to provide education for those under the age of 16 years; nor Children's Services for failing to provide suitable accommodation (or even safe accommodation, in some cases) for young people in their care. These were all identified by YOS staff as factors which had a significant impact on a young person's compliance with a statutory order, yet none of these organisations / authorities were held to account. The only party whose behaviour was scrutinised in court was the young person, and sometimes their parent(s) – although never the corporate parents.

The solicitors in court appeared to be variable in quality and reliability. Many did not bother to meet the young person they were representing prior to the hearings. While each young person had legal representation in the form of a solicitor, the poor quality of

many solicitors deprived the young people of a proper defence. Many of the staff in Pengaron described the likelihood of getting proper representation as "pot luck". At one court hearing in Llanfadog, where a BSO offence charge was put to the child along with three other (non-breach) offences, it was evident that the solicitor had not read the young person's pre-sentence report before representing him in court. One of the case managers in Llanfadog said of other solicitors:

> *"having a five-minute chat with the young person before going into court – that's their idea of 'getting to know the client'"*
>
> CM6, Llanfadog

In both YOTs, the young person's behaviour in court appeared to impact the outcome. In some cases they were even more likely to receive a custodial sentence if they said in court that they would prefer to be "sent down" rather than comply with a community order. The level of engagement between the magistrates and young person (and their parent / guardian, if present) was, in most cases, minimal. Very little insight into the offences was gained in the courtroom; the magistrates relied almost entirely on the pre-sentence / breach / progress reports to inform their decisions. This deficiency in the conduct of the court hearings further highlights the importance of the YOTs providing comprehensive reports to the courts.

6.6 Conclusion

Three questions were asked in the introduction to this chapter: on what basis are children breached by the YOT or Referral Order Panel; on what basis are they convicted; and, on what basis do magistrates decide how to respond to an admission or finding of 'guilt'? This chapter concludes by identifying key issues which have emerged in response to these questions.

First, on what basis are children breached? Three pervasive themes emerge in connection with this: responsibility, risk, and '*Standards*' (process). Emphasis on children's responsibility for failing to comply with their orders was widespread, as reflected in the conversations / interviews and in the case files. Even when 'best interest' was cited – for example using breach as a mechanism to set boundaries and/or to get the child 'back on track', and where the only recommendation made to the magistrates was to reiterate to the child 'the importance of complying' – the sole responsibility for the failure

to comply was clearly placed on the child. Even though most YOT staff (to varying degrees) acknowledged and observed their responsibility for helping the child to comply (by employing various 'tactics', such as giving lifts to appointments), if the child continued to fail to comply, then that was their responsibility.

'Risk' was also pervasive in the discussions: perceptions of the child's 'risk' to others, and of the 'risk' to the YOTs' / courts' reputation, were seen as reasons for breaching. Significantly, the YOTs'/courts/YJS' risk *to the child* were generally not considered (see Evans, 2017). This only exception was the three case managers who were 'anti-breach' because they thought it was intrinsically harmful.

The influence of the *National Standards* – or rather, of a misinterpretation of the *Standards* – was also pervasive, and closely connected with perceptions of 'risk' to the YOTs' reputation if they did not properly implement the *Standards*. This view of breach was inherently process-driven, where the child was clearly not the primary concern. Concern for adhering to (a false interpretation of) the *Standards* frequently overrode the concerns YOT staff had about the difficulties children had complying due to their 'chaotic' circumstances. Thus, even when staff acknowledged that the source of children's non-compliance was, to a large extent, affected by circumstances not of the child's making, the children were still held responsible because of this concern for implementing the *Standards*.

A straightforward answer was provided to the second question: the basis of most children's 'conviction' for BSO offences was their admission of guilt. That children appeared to be systematically advised to admit guilt for the breach offences raises significant concerns about due process (or its absence). It meant that the prosecution did not have to establish that their non-compliance occurred "without reasonable excuse". In light of the discussions with the YOT practitioners and managers (many of whom cited 'chaotic' circumstances as an explanation for children's non-compliance), and in light of the findings emerging from the case files and interviews with young people about the circumstances of their non-compliance, it seems likely that many of the cases of non-compliance which were heard in court did not, in fact, constitute BSO offences.

As for the third question – on what basis did magistrates make their sentencing decisions – it appears that the primary influence was the recommendations made by YOTs in the breach reports. Again, this links back to the first issue of responsibility: the court has the power to hold services accountable for their failures. However, by simply implementing the YOTs' recommendations (or opting for harsher 'punishments'), they, too, assumed that the responsibility for complying was only the child's to bear.

The next chapter considers these issues, along with other findings highlighted in the previous two chapters, in relation to the aim and principles of a ‘children first’ philosophy as set out in Chapter 1.

Chapter 7: Discussion of study's findings

7.0 Introduction

The reader will recall that the overarching aim of this investigation is to establish whether, and to what extent, breach practice in Welsh Youth Offending Teams and their associated Youth Courts is underpinned by a 'children first' philosophy. Having presented the findings of the investigation in the preceding three chapters, this chapter interrogates them, referring to the academic, policy and empirical research literature on 'children first' and non-compliance/breach which was presented in Chapters 1 and 2.

Section 7.1 focuses on the most important people in this study: the children themselves. In Chapter 1 (section 1.1), the underpinning rationales for a 'children first' philosophy were identified: first, the relative immaturity of children and their very limited capacity to influence their social situation and the choices available to them within it; and second, the significant social injustices which characterise their lives and experiences, often including high levels of unmet welfare needs and limited life chances. Section 7.1 highlights that the children in this study – especially those with breach convictions – evidenced significant levels of unmet needs. It underlines the failures of services both within and outside the YJS to meet their obligations to the children, and elaborates on the links that the young people who participated in the study made between the effect of these failures on their compliance with criminal justice orders.

Section 7.2 considers the rationales given by the adults in this study for breaching in connection with the overarching aim and principles of 'children first' as identified in Chapter 1 (section 1.4). It shows that while there was evidence of some 'children first' principles on an organisational level in Pengaron, and while some practitioners in both YOTs exhibited a commitment to one or more of these principles, these were not applied with equal conviction in relation to decisions around non-compliance.

Section 7.3 revisits some of the main concerns in relation to the court proceedings and decisions, before proceeding to identify some barriers to the implementation of 'children first' practice by YOTs in section 7.4. Section 7.5 concludes the discussion in this chapter with a final reflection before turning to the Conclusion of this thesis.

7.1 Children's experiences: violation of rights and deprivation of entitlements

From the outset, it must be emphasised that the purpose of this discussion is not to characterize children as helpless victims of adversities and service failures. This would be

an inaccurate portrayal of the young people who participated in this study who showed great resilience and good humour in articulating their experiences of the Youth Justice System. It is, nonetheless, a significant matter that their lives were characterized by so many adversities – outside the YJS, and often exacerbated from within. It is significant *in its own right*, as it is a clear demonstration of services failing to meet their obligations to enable these children to access their fundamental rights and entitlements. This is contrary to Welsh Government social policy and their youth offending strategies; the UNCRC; and a host of other international 'rules' and guidance specific to youth justice. It is also significant because of the implications this had for their actual and perceived ability to comply with their orders.

Children on criminal justice orders *in general* had experienced significant deprivations of their rights and entitlements, not least the right to education (or the entitlement to a 'tailored education' – see WAG, 2000; 2002); access to mental health services (WAG, 2000; 2002); and to 'special protection' and 'alternative care that is continuous' under Article 20 of the UNCRC for children taken into the state's care. Those who had breached a criminal justice order were more likely to experience a greater combination of these (and other) adversities and disadvantages and at a greater rate than those who had no breach history. This finding corroborates those of Hart's (2011a) and Grandi and Adler's (2016) studies. Boys, especially those with experience of the care system, were by far the groups most over-represented in the cohort of children who had breached an order. In both YOTs, males constituted 100 per cent of those who had breached their orders (at the time the data for this study were collected), while children in care constituted 91 per cent in Pengaron (ten out of eleven) and 50 per cent in Llanfadog (four out of eight).[100]

Some of the children who were interviewed made explicit links between deprivations of entitlements / rights and their non-compliance, though they did not label them as such. One way in which this connection was made was in relation to the difficulties young people reported having complying with an electronically monitored curfew. This was often connected with their feelings about the place to which they were 'tagged': being placed in Bed & Breakfast accommodation was commonly cited by children in connection with curfew violations. Some staff in Pengaron complained that one particularly 'unsafe' Bed & Breakfast hostel was systematically used by Children's Services to place some of the older children (16 and 17-year olds).

[100] Recall that children in care made up 47.5 per cent of males on criminal justice orders in Pengaron (19 out of 40) and 26 per cent of those in Llanfadog (14 out of 53). The over-representation is similar in both YOTs, with approximately twice the proportion of 'CLA' in the overall statutory caseloads in the 'breach' population.

This raises at least three questions: why were Children's Services (CS) allowed to place children in such accommodation in the first place? Why, given the complaints of children and staff alike, were the courts not used to hold CS to account? And why were curfews recommended by YOTs and imposed by magistrates if they knew that the accommodation was unsafe and/or unsuitable? The answer to the first question may lie in secondary legislation. Even though statutory guidance in Wales states that "Bed and Breakfast accommodation for 16 and 17 year olds is not normally considered to be a suitable option" (WAG, 2010:4), it has not been outlawed.[101] Given the pressures on Children's Services (and social services, in general) to accommodate increasing numbers of 'looked after' children under conditions of depleting financial resources, it may well be the case that they are resorting to placing children in 'wherever is available' (Welsh Local Government Association, 2018). Another possibility relates to the increasing privatisation of the social care sector.[102] Given that the local authority's power to influence the policies / practice of privately-run residential units / care homes is limited, it is possible that practices which are antithetical to 'children first' principles are exercised in these homes unchecked. The extensive address histories in some of the children's case files certainly implied that many of the care homes were quick to expel children for exhibiting difficult behaviour. This clearly calls into question the degree to which the principle of 'universality' in the Welsh Government's social policies for children are taken seriously. Moreover, it suggests a failure of Children's Services to comply with the 'due regard' duty to the UNCRC, as is their obligation under the *Social Services and Well-being (Wales) Act 2014*.

As for the third question – why curfews were recommended and implemented – this might be explained by Blayne's observation on the punitive intention of curfews:

> *"It don't even make sense, like… if I was going out on the town, like, terrorisin' people at night and shit and doin' burglaries, I'd get it… but my offences got nothin' to do with tha'…* Blayne, Pengaron (see also Chapter 5)

Although case managers and operations managers in both YOTs argued that a curfew requirement could be in the best interests of some children (e.g. by giving them an 'excuse' not to go out with their friends who were involved in offending), they too, acknowledged that it was sometimes used as a form of punishment. Some examples of this were found in

[101] See provisions in *The Homelessness (Suitability of Accommodation) (Wales) Order 2006*.
[102] In both YOT areas, care homes run by the local authority were a minority – most residential units were run by private companies.

breach reports, where case managers recommended extending a child's curfew (where curfew violations were the instances of non-compliance) as punishment for the breach. Clearly, this is contrary to the 'children first' principle of 'doing no harm' which includes not using punishment as a rationale for sentencing or the instigation of criminal proceedings against a child.

It seems clear that the decision to impose / extend a curfew ought, *at minimum*, to be based on certainty that the address in which the child is expected to reside is safe. The legislation, however, only requires that "the court must obtain and consider information about the place proposed to be specified in the order" (Schedule 1, section 14 of the *Criminal Justice and Immigration Act 2008*). The findings of this study suggest that there is a strong case for arguing that Youth Courts inadequately consider the suitability of the child's accommodation before imposing a curfew. This is even more significant given that the most frequently cited instances of 'unacceptable' non-compliance found in the breach reports were curfew violations.

The second link which was made by the young people between violations of rights and non-compliance related to their treatment in, and hence perceived illegitimacy of, Referral Order Panels. In Chapter 2 (section 2.2.2), it was argued that the way in which some children reported being treated during panels constituted clear violation of their rights; not least in relation to Articles 3 (prioritization of best interests), 12 (listening to and respecting the child's views), 37 (freedom from inhumane or degrading treatment), and 40 (respect and dignity), of the UNCRC. These violations were observed by this researcher in Panels, but also in court proceedings. This, along with comments made by young people on their experiences in court corroborated the findings from a recent briefing on young people's experiences of Youth Courts – that the tools are in place for courts to enable children to place legitimacy in the process and outcomes, but that they are often not applied (CJI and ICPR, 2020). The findings of this study extends this criticism to Referral Order Panels. This is arguably even less acceptable as Referral Order Panels, unlike the courts, have been designed *specifically for children* (whereas the Youth Court appears to be, at best, a variation on the adult magistrates' court), and with the explicit aim of helping them to (re)integrate into their local community, "underpinned by the principles of restoration, reparation and reintegration" (MoJ and YJB, 2018:5).

This raises significant concerns about the lack of accountability of the panels to the children. David Lammy, in his review on the over-representation of Black and ethnic minority children in the YJS, identifies Referral Order Panels as "a small step in the right direction" (Lammy, 2017: 41), arguing that community involvement in the youth justice

system is a good thing. This is especially so because of their potential to mitigate against the barrier faced by children of black and other minority ethnicities when criminal justice decisions are made about them by people who have few 'shared experiences'. He emphasises, however, that they "could go further in involving parents, communities and key local services" and should be reformed to emphasise "greater focus in shared responsibility" (Lammy, 2017:41).

This sounds good, in principle. Using "justice panels" as a way of ensuring that local services are fulfilling their responsibilities to the child, and to support parents to do the same, is highly resonant of the principles of 'children first'. However, as these findings indicate, the benefit of community member involvement is entirely contingent on the quality of the engagement of those members. While YOTs provide training for Referral Order Panel members, these findings raise questions about the quality of that training and/or the rigour of the selection criteria for accepting volunteers. One can teach process and procedure, but it is very difficult to teach or change attitudes and values. In other words, for justice / community panels to have the desired effect, there needs to be a rigorous training and selection process in which potential volunteers' individual attitudes, values and beliefs are tested.

A third direct connection between deprivation of rights and entitlements and (non)compliance relates to the 'opportunities' provided in the YJS. The initial review of the literature considered how the type of work undertaken by YOTs to promote children's well-being may increase their likelihood of engagement and thus comply with (at least some aspects) of their orders (see Chapter 2, section 2.2.2). While this was indeed the case (reparation in Pengaron was a prime example), it was not anticipated that some children would state that they were more likely to take action to prolong their involvement with the YOT in order to benefit from these opportunities, whether by failing to comply, or by committing further offences (see Chapter 5, section 5.2.6).

Even more surprising (and worrying) was the revelation that some children would deliberately fail to comply in the hope of going to custody, because they believed that they would be better off in prison than outside. Whether they wanted to stay in the community with the YOT, or go to custody, the fact that the children felt that they were therefore better off in the YJS than outside it is an indictment of the state of 'universal' services for failing to fulfil their obligations to provide – and make accessible – such opportunities (entitlements) for the children (WG and YJB, 2014). The impact of austerity budgets on their ability to deliver universal services should not be underestimated: this has resulted in the prioritization of service delivery according to those with greatest need, meaning that

what were originally intended to be universal services have ended up being targeted services.

The final point in this section relates to the reported[103] excessive emphasis during supervision sessions (and Referral Order Panels) on discussing offending behaviour. The potential of this to further reduce children's overall well-being by reinforcing their identity as 'offenders' seems evident and is anathema to even the most basic understanding of 'children first': avoid labelling children as 'offenders' (see Chapter 1, section 1.1). Even if they were not literally called 'offenders', persisting with conversations about their offences where they had already done this at least twice (PSR report, at court, and for Referral Orders Panels) is surely an equally efficient way of labelling them and reinforcing any existing self-perception as 'offenders'. This emphasis may have been partially influenced by the *Case Management Guidance* (YJB, 2014) in which YOTs are encouraged to challenge 'offending behaviour' (see Chapter 2, section 2.4). That said, YOTs have considerable flexibility in deciding on session content and style of delivery, so it may also be a reflection on the beliefs and values of individual practitioners (see discussion below in relation to 'discretion' and 'professional identity').

7.2 YOT rationales for breach

This section considers the YOTs' rationales for breaching in connection with the working definition of the overarching aim and enabling principles of 'children first' provided in Chapter 1 (section 1.4):

Overarching aim:

> The prioritization, by all youth justice agents, of the aim of maximising children's well-being in every decision and process affecting the child, where well-being is understood as a combination of *realising* the rights of the child as according to the UNCRC, and enabling the child to have the *means* to pursue subjective goals or aspirations.

[103] No supervision sessions were observed, but conversations with both young people and case managers, and references to 'offending behaviour contact' in case files suggested that this was a core component of supervision.

Enabling principles:

- **Not doing harm**: maximum diversion from the formal system, especially custody; minimum sufficient criminal justice intervention; not using punishment as a justification for any intervention; and ensuring that interventions, processes, and interactions with children and their families/carers are inclusive, not stigmatising.
- **Primacy of the welfare principle** and of the child's best interests.
- **Provision of citizenship-based universal rights and entitlements** to children and their families, guaranteed by the State and with local versions detailing tangible services and opportunities;
- **Service accountability**: services must be 'responsibilised' for upholding children's rights and ensuring that children are *aware of* and *able to take advantage* of their entitlements as set out in *Extending Entitlement*.
- **Meaningful participation** in all decision-making, processes, and interventions; and
- **Inclusive interventions** which build young people's skills.

In Chapter 2 (section 2.3.6), it was argued that of all the 'purposes' of breach identified by practitioners in the wider literature, the only one which could be compatible with a 'children first' philosophy was breaching in order to bring a child 'back on track', where this was underpinned by a belief that this was in the child's best interests. It was further argued that a 'child first' response must, by definition, centre the child as the primary concern. With this in mind, four pervasive themes which can be discerned from the discussion on breach decision-making are considered: 'responsibility', 'risk' (public protection and service reputation), 'best interests' and '*National Standards'*.

7.2.1 Responsibility (of the child)

Overwhelmingly, the discourse on 'responsibility' which emerged from the YOTs focused on the *children's* responsibility to comply with their orders. While staff recognised that some children had more difficulties than others complying, a majority view was that 'nonetheless, it's a court order, and they have to do it'. Even where the case managers questioned the appropriateness of the order, their response was to try to support the child

through the order, rather than challenge the suitability of the order in court.[104] This is despite guidance in the *Standards* encouraging YOTs to return orders to court when any requirement seems 'unworkable' (MoJ and YJB, 2013). This is not to deny the various mechanisms that were employed by the YOTs to promote compliance (albeit differentially, according to the individual beliefs of the case managers), which can be interpreted as a recognition of their responsibility to enable the child's compliance. Rather, the point is that if a child still failed to comply despite the efforts made by the YOT to promote his/her compliance, then the sole responsibility for the failure to comply was placed on the child. On paper, it was the child's fault; not the YOT's, not the court's, nor any other service.

This was implicit in the way many breach reports were written. Even where the only recommendation was for the court to 'reiterate the importance of compliance' (and, in so doing, remind the child of other possible – worse – consequences), this clearly 'responsibilised' the child for complying with the order. In other breach reports, this attribution of responsibility was more explicit, as with those which recommended the imposition of punishment, whether by using the word 'punishment', or by recommending extra hours of reparation, or an extended curfew (for how else can this be understood, other than a punishment?). What was notably sparse in the discourse on 'responsibility' in relation to compliance was the 'responsibilisation' of other services – education, social services, mental health services – to fulfil *their* duties to the child. In particular, the fallibility of corporate parents was routinely identified during interviews with staff, but rarely mentioned in breach reports.

This is in complete contrast to the Welsh social policies, youth offending strategies, and wider youth justice literature which were built upon to develop a working definition of a 'children first' philosophy of youth justice (see Chapter 1, section 1.4). The emphasis on holding services accountable for delivering services to children which enable them to enjoy their unconditional rights and entitlements which are the essence of their citizenship is central to these policies and strategies (WAG and YJB, 2004; WAG, 2000, 2002; Welsh Government and YJB, 2014). This means that children should not be blamed and made to take responsibility for the failures of services to uphold their obligations (see Haines and Case, 2015; Lammy, 2017; Taylor, 2016). The use of breach in order to 'enforce' compliance, where the reasons for non-compliance are a cause of violations of rights and/or deprivations of entitlements, does precisely that: it 'responsibilises' children for the

[104] There was one notable exception, where a case manager in Pengaron presented a proposal in a breach report for the child's order to be changed from a YRO with ISS to standard YRO with an extended activity requirement. However, the magistrates in this case chose to impose a 4-month DTO instead to 'punish' the child for his second breach of the order. In this context, it might be wiser to try to 'get the child through' the order rather than risk placing decisions with magistrates, which may be more harmful.

actions / failures of adults. As was argued in Chapter 2 (section 2.3), breaching a child on the basis of individual accountability ('they have to do the order'), especially when the young person's compliance has not been properly facilitated by the YOT / other services, is contrary to the 'children first' aim of maximising the child's well-being.

In the introduction to this thesis (see *Introduction: initial considerations*), it was suggested that, in the absence of a clear understanding of the philosophical underpinning of the statement 'children first (offenders second)', practitioners' interpretation of the phrase and hence its impact on breach practice is likely to vary. This is not least according to their own views of childhood and 'youth offending' and the associated concepts of responsibility, structure, and agency. Moreover, in Chapter 1 (section 1.2), it was argued that in Welsh policy, *all* children are considered to be young citizens with fundamental human rights and entitlements, and that this conception of childhood should underpin youth justice responses under the *Children and Young People First* youth offending strategy. Notwithstanding the fact that very few participants cited 'children first' as an influence on decision-making (see Chapter 6, section 6.2.2, see also this chapter, section 7.2.3), this investigation did reveal that the idea of children as citizens was not prominent in the YOTs, and that children were often characterised as 'mini adults' who were fully responsible for their actions (see Haines and Case, 2015). To repeat the words of one case manager who was explaining why he was not happy with giving lifts to young people to their appointments:

> "They've got to take responsibility for themselves at some point… we can't just keep treating them like children"
>
> CM5, Llanfadog

Of course, as children mature and their competencies develop, the level of responsibility which can be attributed to them for their behaviour / actions should also increase. This was evident in both the statistics on the age of those breached (mostly 15 years or older) and in the comments made by staff about being more 'lenient' with younger children. However, where it is evident that their actions or inaction are a cause of violations of their rights, they should not be blamed and/or punished. There is no contradiction between, on the one hand, supporting children to increasingly take responsibility for their actions, and on the other hand, not blaming, 'responsibilising', and criminalizing them for the failures of others to uphold their fundamental rights and entitlements.

One particularly alarming use of 'responsibility' as a rationale for breaching was the tendency, reported by staff in both YOTs, to be more likely to breach 17-year olds on the basis that they would be unlikely to 'get away' with non-compliance in probation. On this view, staff saw themselves as doing children a favour by preparing them for the hard-hitting reality of life as adults in the criminal justice system. The assumption that the children would be transferring to probation is problematic, as is the idea of children 'getting away' with non-compliance. The latter completely ignores the individual, structural and environmental barriers to children's compliance, let alone the barriers which were intrinsic to the orders (see Chapter 5, sections 5.2 and 5.4).

Such comments were even more inexplicable given that the vast majority of adult participants in this study recognised the multiple adversities and disadvantages experienced by many of the children whom they supervised on criminal justice orders. No one denied that this might make it more difficult for them to comply with their orders. To the contrary, many YOT staff identified 'chaotic' circumstances as being directly correlated with non-compliance. The way in which 'chaos' was commonly described was inclusive of unstable accommodation, substance misuse, lack of 'routine' (i.e. not in education, training or employment), 'entrenched' patterns of offending, and, sometimes, criminal or sexual exploitation and/or learning difficulties (see also Johns et al., 2018:vii; see also Welsh Government and YJB, 2014). Arguably, none of these factors which contributed to 'chaos' were of the child's making; the two factors which may be considered 'personal' – substance misuse and repeat offending – often arising from / exacerbated by service failures (see, e.g. Johns et al., 2018; Haines and Case, 2015).

The tension between this recognition of the significant adversities (rights-deprivations, or structural barriers to compliance) that the children experienced, on the one hand, and the simultaneous 'responsibilisation' of children for non-compliance arising from these, on the other hand, is difficult to resolve.

7.2.2 'Risk' (to everybody but the child)

If the 'responsibility' justification for breaching is highly contentious from a 'children first' perspective, the 'risk' justifications which are prominent in this study are surely untenable. Breaching based on the perceived 'risk' posed by the child clearly does not have the child's well-being as its primary concern. In fact, the *child* is not the primary concern. Two primary concerns were widely cited in connection with 'risk': the risk presented by the child to the public (i.e. risk of 'serious harm' or of reoffending); and the connected risk

posed to the YOT's reputation by not 'enforcing' court orders. Considerations of risk posed *to* the child's well-being by breaching were barely mentioned; only three practitioners – all from Pengaron – stated that this was a factor that influenced their decisions (not to breach).

Public protection – otherwise understood as a concern for the perceived risk posed by the child to others – was cited by all three operations managers and five practitioners across both YOTs as an influence on breach decisions. This is, perhaps, unsurprising, given the centrality of 'risk factor' identification and 'calculations' of 'risk level' in the YJS for nearly 20 years.[105] However, there are at least four reasons to question the legitimacy of this basis for breaching children. The first relates to the inexact science of predicting future behaviour on the basis of 'risk factors'. The second concerns what breaching a child means: accusing them of committing an offence. The third relates to the notion that non-compliance alone can change the level of risk a child appears to present to the public. The fourth concerns the idea that breaching will somehow lower, or remove, this perceived 'risk'.

The problems associated with trying to predict future behaviour based on generalized probabilities were discussed in Chapters 2 and 6 (sections 2.3.3 and 6.2.3) so are only briefly revisited here. The main problems are that the links between risk factors and offending are inherently complex, and that 'risk factors' can impact differentially. In other words, it is difficult to know which might have more weight than others at particular times and with particular population groups. By applying generalized probabilities to individuals, risk assessment can produce 'false positives': that is, inaccurate identification of 'potential' offenders who may then be subject to unwarranted intervention (see Case and Haines, 2009; Armstrong, 2004; Baker, 2004, 2008; Briggs, 2013). Perception of 'risk level', therefore, is a highly questionable basis for making decisions, whether about specific interventions, or responses to non-compliance.

As for the second concern, what it *means* to breach a child, it is necessary to recall the Ministry of Justice and Youth Justice Board's definition of a breach of statutory order offence:

> "failing *without reasonable excuse* to comply with the requirements of an existing statutory order" (MoJ and YJB, 2017a:2)

[105] Since the implementation of the *CDA 1998*, and until around 2015-16 when 'desistance' theory was introduced to YOT assessments – AssetPlus – see Chapter 2 (section 2.3.3).

This is the accusation that YOTs put to the child when deciding to breach. The foregoing discussions have already highlighted that many staff acknowledged the factors in children's lives which could affect their ability to comply. Given that these would likely constitute a "reasonable excuse" for non-compliant behaviour, surely the child cannot be said to be 'guilty' of the offences. While the 'responsibility' justification for breaching can be understood in terms of a perception of children as 'mini adults' and accountable for their offences, the 'risk' justification can be understood as an extension of children's accountability to offences they *might* commit. On this view, children are a *threat* to the public, and breach is a tool which aims to minimize or remove that threat.

The third concern relates to the idea that non-compliance alone changes the level of 'risk' a child poses to the public. Presumably, when these children were originally sentenced to a 'lower end' criminal justice order (a Referral Order or a Youth Rehabilitation Order), 'public protection' was not a central consideration. In that case, unless they then proceeded to commit a further, more serious offence, as well as failing to comply, breaching them for their non-compliance on the basis of a 'public protection' argument is surely indefensible.

This brings us to the fourth, fundamental, problem with the 'public protection' justification for breach: the illogic of the idea that breaching a child will reduce, or remove, the 'threat' they present to the public. As discussed in Chapter 6 (section 6.2.3), this justification only makes sense if the YOT believes that the child will be prevented, or at least deterred, from reoffending. The only way in which a child could be literally prevented from reoffending (in public[106]) is through a custodial sentence. Even then, this would only be temporary, and, in breach cases, very short-lived: the maximum custodial sentence available for a BSO offence is a 4-month Detention and Training Order, unless the original offence for which the child was convicted was imprisonable. Thefts, criminal damage, and low-level assaults, which were among the most common offences committed by the young people,[107] are not imprisonable offences (see Chapter 4, section 4.3.2.8). Assuming, therefore, that a 4-month DTO was imposed, this would mean that the 'threat' presented by the child was removed from the public for two months. Then what? And what of the potential increase to a child's level of 'risk' of reoffending and/or serious harm to others by being placed in custody?

[106] The child could, of course, continue to offend inside custody.
[107] Possession of drugs was common too – though small quantities for personal use is not an imprisonable offence, and possession of drugs for distribution ought to be considered under the provisions on criminal exploitation in the *Modern Slavery Act 2015*.

The YOTs did, at an organisational level, recognise the harms of custodial sentences and/or their potential to increase children's likelihood of reoffending. This was evident in that they operated a policy of never recommending a custodial sentence for a child (though this is not to say that all case managers agreed with this policy, nor to deny that some of them implicitly advocated for custodial sentences in breach reports – see Chapter 6, section 6.4; see also section 7.3). However, this was the only demonstration of their recognition of the potential impact of the *system* on the child's level of risk. No one suggested that *their* decisions in relation to non-compliance had the potential to increase (or lower) children's level of risk to others. This betrayed an understanding of 'risk' as something originating from, and limited to, factors outside the Youth Justice System, whether personal, or socio-structural. There was no consideration of the impact that repeated court hearings might have on children's 'risk' of reoffending, for example by helping to entrench a self-perception as 'offenders' (see Evans, 2017, for a risk assessment of the agencies and decision-making processes that can impact negatively on children and young people). Nor was any significance attributed to the possibility that being treated unfairly (e.g. punished for a BSO offence, and/or being spoken down to in court or Referral Order Panels) might impact on children's desire to form a relationship with the YOT – itself a precondition for the success of interventions which aim to increase children's well-being and, consequently, reduce their likelihood of continuing to offend. There is a certain irony in that, by breaching to reduce the child's level of risk it might have the opposite effect.

So far, the discussion in this subsection has deliberately focused on the impact of breach on 'risk' in relation to reoffending and/or of serious harm. In other words, the risk posed *by* the child to others. This is because these were by far the most prevalent concerns stated by staff when justifying breach in relation to risk. It is worth reiterating that only three practitioners considered 'risk' in terms of the risks posed *to* the child's well-being that breach entails. This was surprising, given that in their assessments of young people, YOTs are expected to rank children from 'low' to 'high' in relation to the risks to the child's safety and well-being *as well as* the child's risk of reoffending and of serious harm. Assessing factors which may place the child's well-being (including safety) at risk is therefore a central part of the YOTs' planning duties. It seems evident that breach – even when well-intentioned (see 'best interests' in Chapter 6, section 6.2.2; see also in next section) – has the potential to jeopardize the child's well-being, not least in relation to the fact that the outcome of the breach hearing is beyond the YOTs' control. As such, it should form part of 'risk planning'.

Despite this relative absence of concerns for well-being in connection with 'risk', some staff's views of the *Enhanced Case Management* approach (ECM) indicate that they did, in fact, recognise some of the potential harms of breach to the well-being of the child. This was evident in the comments they made about ECM 'legitimizing' their decisions not to breach, or 'allowing them' to be more flexible. Although there was also some clear resistance to ECM (mainly among the emphatic proponents of individual responsibility), others acknowledged that breach could jeopardize the relationship-building process which, they perceived, as important and central to their work.

Once again, this reveals an inconsistency or tension in the views that both managers and practitioners held: if it is acknowledged that breach has the potential to damage relationships between the YOT and young people (i.e. it is inherently risky), then why does it only become a prominent concern in cases where the children are referred to ECM? If relationship-building is central to their work, and to the success of interventions with children, then surely the same caution should apply to all children, regardless of whether they are identified as having experienced childhood trauma. Moreover, if 'breach' is justified on the basis of the 'risk' presented by non-ECM children, what makes ECM cases different? Are children who have experienced childhood trauma less likely to pose a risk to others than those who have not?

This subsection has highlighted several issues which question the legitimacy, but also the logic, of breaching based on perceived 'risk'. Combined with the comments made by operations managers about their concern for the YOTs' reputation, and being 'seen' to be delivering the court orders, it is prudent to repeat the question Hart asked in a follow-up article to her study on breach: is breach really concerned with public protection, or is it more indicative of a concern for public perception? (Hart, 2011b). The findings thus far suggest that the latter.

7.2.3 'Best interests' (children first?)

Based on the above discussion, it is difficult to see how breach can be consistent with a 'children first' philosophy. It was argued in Chapter 2 (section 2.3.6) that breach might be viewed as being underpinned by a 'children first' philosophy if the case manager who instigates the breach does so because s/he believes it will enable the child to re-engage with the YOT interventions which they perceive to enhance the child's well-being.

First, it is important to reiterate that there were varying interpretations of 'best interests' among practitioners, managers, and magistrates (see also Cross et al., 2003).

Most YOT practitioners believed that the work they did with the young people improved their life chances, and as such it was in the 'best interests' of the children to engage with the YOT and complete their orders. Examples given of the benefits to children were similar to those identified by the young people who were interviewed: finding work / training opportunities, undertaking recreational activities like fishing and going to the gym, and, in Pengaron, a range of skill-building opportunities through the reparation programme. While positive relationships with workers were also considered a benefit, supervision sessions were not mentioned by any of the staff as an example of the way in which children's well-being was promoted. Very few staff thought that the curfew requirement was beneficial to children's well-being.

Given the comments made by young people on supervision sessions (emphasis on offending behaviour) and the complaints by both staff and young people about the electronically-monitored curfew, it seems no coincidence that the most frequently cited instances of non-compliance cited in breach reports were curfew violations, followed by failures to attend supervisions sessions. This begs the question: what actually matters – meaningful engagement, or formal compliance? The distinction between formal and substantive compliance was made in Chapter 2 (section 2.2.1 – see Robinson and McNeill, 2008, 2012), where it was suggested that substantive compliance (i.e. meaningful engagement) is more important than formal compliance if the aim is to maximize the child's well-being, and, indeed, to promote longer-term voluntary compliance with the law – or desistance (Bottoms, 2001). On this basis, meaningful engagement with *some* aspects of the order should be prioritized over formal compliance with *all* aspects of the order. Breach reports, however, indicate that the formal breach process is entirely concerned with formal compliance. Even though report authors provided some details as to the overall progress the child had made on the order (and the level of detail in this section varied considerably, according to individual case manager – see Chapter 6, section 6.4), the instances of 'unacceptable' non-compliance cited were predominantly missed sessions or curfew violations. Whereas individual case managers would try to avoid breach in order to promote the child's engagement, it was clear that the pressure (or will) to breach was based on children's formal non-compliance, not levels of meaningful engagement.

The argument made by some that it was in the 'best interests' of the child to comply (and engage) with the order because of the 'well-being' opportunities involved, and hence legitimized the use of breach as a tool to try to get them to (re)engage, should be further questioned in light of the above discussion. Children were clearly quite aware of what interventions benefitted them; this was most evident in the general enthusiasm among

the young people in Pengaron for reparation sessions. By insisting that children comply with all aspects of the order, this ignored the children's voices and hence a central principle of 'children first': participation in decision-making and processes.

The most fundamental question about this 'best interests' justification for breach is the way in which it promotes compliance and engagement. Bottoms (2001; see also Chapter 2, section 2.2.2) identifies four 'reasons' for compliance – 'prudential/instrumental', 'normative', 'constraint-based', and 'habit/routine'. The use of breach was understood as a 'disincentive' which would promote 'prudential/instrumental' compliance. In other words, breach was a 'threat', and for those who made rational calculations about costs/benefits, it would make compliance more likely. This study showed that breach had the opposite effect on some children, who perceived *non*-compliance to be prudential, given the 'opportunity' to go to prison or otherwise prolong their involvement with the YOT (see Chapter 5, section 5.2.6). The 'best interests' justification, however, exemplified the promotion of 'constraint-based' compliance, where it was hoped that by going back to court, children would be coerced to re-engage. The commonplace recommendation for magistrates to 'reiterate the importance of compliance' to the young people, while reminding them of the consequences of further non-compliance, resonates with the Bottoms' 'structural' constraints: compliance achieved by being "cowed into submission by coercion inherent in a power-based relationship" (2001:93). Notwithstanding the fact that this often failed (as demonstrated by children who breached repeatedly and/or continued to offend persistently), it is also contrary to the 'children first' principles of meaningful participation and inclusion.

7.2.4 (Mythical) *Standards* (where is the child?)

It was expected that YOTs would be concerned about inspections and being evaluated according to their adherence to the *Standards*. Their misinterpretation of the requirements of the *Standards,* however, was not anticipated. Nor was the conflict between staff's acknowledgement of the barriers faced by children in complying with their orders and their simultaneous adjudication of instances of 'non-compliance' as 'unacceptable'.

The inaccurate interpretation of the *Standards* may be a consequence of the legacy of the discourse on 'three-strikes' in both youth justice and probation. To this end, academics have not helped to dismantle the notion that young people have three chances to comply before being returned to court. There is a constant sidelining in academic literature of the fact that the 'three strikes' policy introduced in the first edition of *Standards* (Home

Office, 1992) is – and has always been – applicable *only if* YOTs /probation officers deem the supervisee's non-compliance to be 'unacceptable'. As Haines and Drakeford noted, despite the threat of the *National Standards* to "knowledgeable, skilful and critical practice" (1998:239):

> "when interrogated with determination to make maximum use out of every ounce of discretion to be bleached from them, it is still possible to act in the best interests of young people caught up within them"

While discussion on the 'three strikes' policy is extensive, practitioners' discretion in determining the un/acceptability of non-compliance, and hence their significant power to influence the outcomes for non-compliance, is marginalized. It is perhaps unsurprising, therefore, that despite the 'three-strikes' requirement in relation to unacceptable non-compliance being removed from the 2013 *Standards,*[108] the legacy of the discourse around previous versions persists.

Nonetheless, it appears that to a significant degree, decisions on whether to breach a child were process-driven in both YOTs. In the words of one operations manager:

> *"ultimately, it doesn't really matter what effect the breach will have on the young person: it does become a process issue"*
>
> OM2, Pengaron

Here, the child does not feature in the decision. Regardless of the intention and impact of the 'responsibility' and 'best interests' justifications, the child is the primary concern. Even the 'risk' (of reoffending/serious harm) is based on a consideration of the child, even if that child is not the primary concern. This 'process' justification, by contrast, shows no consideration of the child. It is a clear example of 'risk-averse' practice: putting the organisation's interests before those of the individual children. This is not to say that this is the intention; there is clearly a very good reason why YOTs want (and need) to demonstrate that they are upholding high standards, not least in relation to promoting the use of community alternatives to custody. But by prioritising 'process' over the circumstances of the child, not only are the child's best interests marginalised, but it also

[108] Although legislation on YROs is still relevant: this does include a 'three strikes' rule, though still contingent on 'unacceptable' adjudication by the supervising officer.

risks jeopardising the efforts made by the YOTs throughout the supervision period to try to improve the child's welfare.

On one hand, this prioritisation of process over the child may be unsurprising, given that the underpinning influence – the *Standards* (MoJ and YJB, 2013, also each previous edition) – are described as being '*for youth justice services*'. Compare this to the most recent edition of the *Standards* (MoJ and YJB, 2019) which, reflecting the inclusion of 'children first' as their *guiding principle*, are entitled 'Standards *for children* in the youth justice system'. This places the child at the centre of the *Standards*; something that was not evident in the *Standards* which were in force during this study.

On the other hand, what about the influence of the Welsh national strategy – *Children and Young People First*? In Chapter 1 (sections 1.3 and 1.4), it was suggested that the greater clarity achieved within the second edition of the youth offending strategy in relation to 'children first' might encourage youth justice practitioners to capitalise on the scope for exercising professional discretion contained within the *Standards* in order to respond to non-compliance in a manner consistent with a child-centred, 'children first' philosophy. It was surprising, therefore, to discover that the local breach policies did not reflect 'child-centred' decision-making, with the stringent requirements of the legislation on breaches of YROs being applied to all order types in Pengaron (recall that the only breach policy in Llanfadog was for ISS), with Llanfadog applying an even more severe reading of the legislation in their ISS breach policy. Even more surprising was the discovery that none of the practitioners had heard of the Welsh strategy, and that only one of the managers – the head of Pengaron – cited 'children first' as an influence on breach practice.

7.2.5 Evidence of 'children first' in practice?

The preceding discussion has demonstrated that the overarching aim of 'children first' (as described in the working definition) was not identifiable on any institutional level in either YOT in relation to breach decision-making. That said, a handful of practitioners from Pengaron were clearly driven by this 'children first' aim of maximising children's well-being and expressed a commitment to each of the six principles. They believed in minimising the harm caused by systems (especially through diverting them from the court) and prioritising the children's best interests; they strove to ensure that children's rights were upheld and that they could access their entitlements (although they did not use 'rights/entitlements' to describe this work); they tried to hold services accountable where

they failed to provide these rights and entitlements – especially Social Services and education providers; and they promoted participatory and inclusive interventions.

In Pengaron, the principles of meaningful participation and inclusive, skill-building interventions were, to a significant degree, evident on an organisational level. This was best illustrated by the content and delivery of reparation sessions, and the design of the Referral Order contracts and the 'Start of Order' forms for other order types. There were counter-examples, however, such as the excessive emphasis on 'offending behaviour' work during supervision sessions with some case managers. The principle of service accountability was also evident in relation to themselves – the YOT's responsibilities to the young people were clearly set out at the beginning of each order – but staff were also expected to hold other services accountable too. While most staff in Pengaron strove to secure children's basic welfare rights, this did not often extend to their entitlements to universal services, with the exception of the substance misuse sessions which were offered in the YOT. The principles of 'doing no harm' and the primacy of the child's best interests were less visible in Pengaron on an organisational level, with great variation between different staff members.

In Llanfadog, neither the aim nor any of the six 'children first' principles were evident on an organisational level. Meaningful participation was impeded by a 'tick-box' approach to compiling Referral Order contracts, and the lack of opportunity for young people on other order types to have any say as to the content of those orders. Neither the reparation interventions nor the supervision sessions could be described as 'inclusive'. Although most of the case managers did try to ensure children's basic welfare rights were upheld, some did not. The management of the YOT failed to ensure a consistency of approach which left many case managers feeling that they were better off getting on with their work as they saw fit, seeking little, if any, managerial oversight. As for the principle of 'doing no harm', some individual workers thought that punishment should not be a rationale for interventions, but contact with the criminal justice system was not seen as intrinsically harmful. Again, the principle of the primacy of children's best interests was not evident on an institutional level, although there were examples where individual case managers had acted according to this principle.

Despite the greater emphasis on 'children first' principles in Pengaron *in general*, when it came to non-compliance, it was as if these principles became secondary as they gave way to the more 'pressing' issues of 'risk' and 'process'. It seems that the 'children first' principles which were identifiable in Pengaron – and to a much lesser degree in Llanfadog – became less relevant when a child was refusing / failing to comply with

elements of the order. This suggests that these principles were conditional – which is contrary to the idea of 'children first' as an approach to youth justice which should apply equally to every child, in all processes, and at every decision-making point.

7.3 In court

Before turning to consider the barriers to implementing a 'children first' philosophy in the YOTs, it is first worth expanding on some of the more concerning findings in relation to the court proceedings. If breach decisions and processes within the YOTs were questionable from a 'children first' perspective, the decisions and proceedings in court were even more dubious. The weakness of this study in relation to the lack of magisterial representation is acknowledged. Nonetheless, some observations have been made in relation to breach proceedings which raise significant concerns about the fairness of the breach process in court, as well the injustices which have already been identified in relation to the YOTs' breach practice.

The most fundamental issue relates to the apparent presumption of 'guilt' in relation to BSO offences. Whether on the advice of their solicitors, or from their own volition, children overwhelmingly pleaded 'guilty' to breach offences. Given the findings of this study, especially the views shared by some YOT staff about feeling pressured to breach despite knowing there were good reasons for children's non-compliance, it is reasonable to conclude that if children had been advised by their solicitors to plead 'not guilty' and had enjoyed a proper defence, the prosecution would have found it very difficult to prove, beyond reasonable doubt, that the non-compliance occurred 'without reasonable excuse'.

The fact that this did not happen – that children just pleaded guilty – suggests either a lack of understanding by the solicitors of what constitutes a BSO offence, or indifference. It also suggests that, in asking children how they plead, magistrates did not ensure that the child understood the substance of the charge – contrary their statutory duty as according to Rule 6 of the *Magistrates' Courts (Children and Young Persons) Rules 1992*. Again, this might be due to ignorance, or incompetence. Whatever the reason, this shows great negligence, whether this is due to the legal advisor failing to inform them that this must be established, and/or by the magistrates' own failure to make this assessment.

Of significant concern is the missed opportunity to hold services to account for their failure to uphold their duties to the child: this is contrary to a central principle of the youth offending strategy in Wales. By failing to do so, where the non-compliance has

arisen out of service failures, the child is implicitly blamed and 'responsibilised' for this. This injustice is compounded by the ability and decisions of magistrates to impose 'punishment' on the children for these failures, and by the treatment of some young people in court which was in clear violation of their rights.

Underpinning all of this is the problem with the requirements of the criminal justice orders in the first place. It is helpful to recall the comment made by the YOT manager in Pengaron:

> *"if every part of the youth justice system was 'children first', non-compliance would be far less of an issue. Of course there are some kids who just won't do anything at all, but* ***the problem we've got is that a lot of these young people are put on orders that are entirely inappropriate in the first place****, given their circumstances… But we're limited when we make recommendations to the court – we've only got so much choice, and so have they"*
>
> HoS, Pengaron

The findings of this study certainly corroborate the manager's contention that children are often put on entirely inappropriate orders (or rather, that the specific requirements are entirely inappropriate). However, the reason for this – "we're limited when we make recommendations to the court – we've only got so much choice, and so have they" – is more contentious. There is much flexibility in the sentencing options available to the magistrates, despite some of the emphases in the *Sentencing Guidelines* on 'punishment'. It follows, then, that there are equally as many sentencing recommendations that the YOTs can make to the courts. However, the YOTs' perception of the options 'available' to them seemed to reflect the 'options' that magistrates tend to implement. It seems, therefore, that YOTs were tailoring their recommendations to what they thought the magistrates would implement, rather than what would be most likely to enhance the well-being of the child. This is resonant of concerns raised more than 30 years ago in relation to the then 'social inquiry reports' written by social workers for the courts:

> "there is … evidence to suggest that the reports may have been written for the magistrates and in anticipation of their decision … or alternatively , in some cases , the recommendations have tended to 'overshoot' the eventual sentence the court imposes" (Pratt, 1985:14).

7.4 Barriers to implementing 'children first' youth justice

It ought to be clear that 'children first', as described in Chapter 1, was not implemented in either YOT. In this final section, the main barriers to implementing 'children first' youth justice are briefly considered.

7.4.1. Awareness and understanding of 'children first' and the Welsh social policy context

The first barrier was simply the staff's lack of awareness of the Welsh youth offending strategy and its 'children first' principles. Despite the publication of the strategy three-to-four years prior to the first phase of data collection, and despite the existence of the 'children first, offenders second' principle in Welsh policy since 2004, not one of the practitioners had heard of it. It is possible that knowledge of this strategy would have given practitioners the confidence to base their breach decisions / process on these 'children first' principles, just as some of the practitioners felt that the *Enhanced Case Management* had enabled them to apply more lenient breach criteria and prioritise the child's welfare and maintaining a good working relationship over implementing the "Standards".

Related to this is the lack of awareness of the Welsh social policy context. Specifically, the position of children as young citizens with fundamental rights and entitlements for which service providers – including the YOT – have an obligation to ensure that they can enjoy. This lack of understanding of the YOTs' duty to uphold children's rights and entitlements enabled practitioners to view 'meeting children's needs' as something that could be prioritised to varying degrees, depending on the circumstances. This resonated with Thomas' findings (2015) which highlighted that practitioners saw 'children first' as something that was conditional on the seriousness of young people's offences. Seen as citizens with the *right* to have their welfare needs met and their entitlements made accessible, there could be no justification for demoting their welfare needs. Moreover, it could give practitioners the confidence to hold others accountable when they violated children's rights – such the local authority's care arrangements, and the manner in which Referral Order panel proceedings were conducted.

However, this awareness of the 'children first' and social policy context in Wales would not be sufficient to ensure the implementation of 'children first' practice. For it fails to consider whether YOT staff actually *want* to implement it. This brings us to another

significant barrier to implementing 'children first' practice: the 'identity' of the YOT staff and their values and beliefs

7.4.2 Professional identity and beliefs / values

Many academics have observed some of the conflicts between different 'professional cultures' represented in YOTs, where the values and beliefs associated with the parent organisations of the YOT staff (social services, the police, probation, education, health) were often challenged by others (e.g. Field, 2007; Cross et al., 2003; Souhami, 2007). In Thomas' investigation (2015), she too found that practice and values were strongly delineated along the lines of social workers versus probation officers / police, with the former more 'welfare-oriented', the latter placing more emphasis on risk and public protection.

In this investigation, however, these 'cultural' identities were not observed in the YOTs – or, rather, they could not be delineated along the lines of parent organisations. The majority of case managers and operations managers (those with breach decision-making responsibilities) had trained as social workers and/or had otherwise spent years, if not decades, in the children's sector (support work, youth work, residential care, etc.). The rest had trained as probation officers, with one who had also served as a police officer. There was no discernible difference in the attitudes and values of social workers, compared to those trained in the probation service. There was a significant degree of variation between individual workers in their personal beliefs and values, as evidenced by the varying practice. The strongest unifying 'identity' that could be discerned among some of the practitioners and managers was that of being 'criminal justice agents' (see Chapter 6, section 6.2). There was a recurring theme among (some) social workers and probation workers alike, namely, that they were there to tackle the children's offending behaviour. It seemed as if some social workers, in particular, had dissociated from their 'social worker identity', in favour of being a 'youth offending worker'. To repeat the words of one case manager:

> *"That's what we're here to do – stop them from reoffending… we're not their social workers"*
>
> CM13, Pengaron (trained social worker)

In other words, some of the case managers perceived themselves as 'criminal justice (social) workers', rather than social workers in the criminal justice system. This resonates with the observations made by Haines and Drakeford (1998) about the impact of the creation of specialist 'juvenile justice teams' within social services departments more than 30 years ago:

> "… within the new orthodoxy, juvenile justice workers tended to adopt a firm stance of working only with offenders and that, in practice, this tended to be interpreted to mean that [they] did not get involved with the 'welfare' problems experienced by many young people" (p.65)

Although practitioners and managers in this study did actively address (to varying degrees) children's welfare needs, the emphasis on the children's offending was nonetheless pronounced in many cases. This perception among some of the practitioners and operations managers of their professional identity as agents *of* the criminal justice system, rather than social workers *in* the criminal justice system, was remarkable: even though the majority of case managers in both teams were social workers, and/or had extensive experience of working in child support, some of them were keen to emphasise that their work was to do with addressing children's *offending*, and that this is what they were entrusted by the courts to do.

Another demonstration of how individual staff's values and beliefs could be a barrier to the implementation of 'children first' relates to the significant differences between practitioners' breach practice. They varied according to their adjudication of the un/acceptability of non-compliance; the number and type of warnings given to children (e.g. formal warning letters and 'informal' verbal warnings); the decisions they made, such as rescheduling appointments or marking them as instances of non-compliance; the frequency with which compliance panels (Pengaron) or breach panels (Llanfadog) were convened; the decisions made during those panels (to breach or to try to address barriers to compliance); as well as the recommendations made in breach reports to the magistrates.

Underpinning these differences were varying conceptions of childhood; of the causes of offending; and of the purpose of the youth justice system. Conceptions of children as 'mini adults' (see Haines and Case, 2015) were clearly identified among those who justified breach on the basis of responsibility. Children as 'threat' became relevant when staff perceived that they presented a 'high risk' to the public; and children as 'victims', or as 'in need', was also clearly identified in the way children were talked about.

Notably absent was any discussion about children as 'citizens', or as rights-bearers. There were those who saw the causes of offending and non-compliance as a result of structural disadvantage, and those who thought children had 'decided' to offend / fail to comply, hence reflecting the 'agency' view. Some thought that the purpose of the YJS was to hold children accountable for their offences and/or to help them to reintegrate, while others (albeit a minority) indicated that the YJS had a significant role to play in pursuing social justice for these children.

This is not to say, however, that there was a straightforward relationship between these values / beliefs and their responses to non-compliance. As has been highlighted throughout this chapter, most staff acknowledged that children's offending and non-compliance was affected by structural disadvantages and rights violations, but this did not preclude them from attributing responsibility for non-compliance to the child. It was more a matter of the degree of emphasis placed on each view, and, of course, the influence of the *National Standards*. To concur with Case and Haines (2020), it appeared in this study that:

> "any sense of a coherent approach to responding to the behaviour of children remains low. This conflict and ambivalence has been animated by competing and conflicting drivers and a vacuum in understandings of children and the nature of childhood." (p.6).

7.4.3 The constitution of the YOT

Despite the potential and intention for YOTs to facilitate closer multi-agency collaboration, in the two YOTs who participated in this study, this set-up presented a specific barrier to implementing the 'child first' principle of service accountability. Case managers who had worked in youth justice since before the creation of YOTs stated that having different workers with specific roles in the YOT – e.g. 'education workers', 'careers workers', and 'substance misuse workers' – was an obstacle between them and the universal service providers who were (often failing) to uphold their duties to the child. Whereas previously, case managers would have been responsible for all aspects of the child's case, now, they had to depend on multiple other workers to ensure that children were getting the services they needed. This was a constant thorn in the side of the case managers, most of whom frequently complained about the poor relationship the YOT had with schools (relationships with Alternative Education providers appeared to be better). One case manager in particular would often reminisce over the days where he knew exactly 'what was going on'

in the schools and ensured that the schools upheld their statutory duties (by threatening to take them to court). The statutory inclusion of one or more representative of the education sector in the YOT was, to this case manager, a 'failed experiment' which created a gatekeeping obstacle between case managers and the schools and made the latter less accountable to the YOT.[109]

7.4.4 Legislative and procedural constraints

Other barriers to implementing 'child first' practice lie in the YRO legislation and procedural arrangements in relation to the curfew requirement. Specifically, the statutory requirement for YOTs to instigate breach proceedings after a maximum of three unacceptable instances of non-compliance committed within 12 months (unless there are 'exceptional circumstances'); the provision for magistrates to impose a curfew of up to 16 hours per day[110] and 112 per week without requiring them to establish that the address at which the young person is expected to reside is safe; and the placement of partial responsibility for breach action in relation to electronically-monitored curfews with the monitoring service.

In relation to the YRO breach requirements, the time frame of 12 months is absurd. A literal reading of this requirement could see a child who misses two appointments without good cause in the first month of his/her order, who then proceeds to comply with every element of the order for the next 10 months, only to fail once more in the last month of his/her order to attend an appointment without a reasonable explanation, being breached. Apart from being unreasonable, this shows complete disregard for the quality of the young people's engagement and overall progress with their order.

As for the curfew requirement, it is entirely unethical to impose a curfew of any length – let alone 16 hours per day – on a child where due diligence has not been observed by the court in ensuring that the address at which the child is expected to reside is safe. Although children's services should ensure that children are never placed in unsafe accommodation, as this study has demonstrated, this is not always the case. It seems clear that the decision to impose / extend a curfew ought, *at minimum*, to be based on certainty that the address in which the child is expected to reside is safe. The legislation, however,

[109] Perhaps this structural barrier to accessing education would not have been present if the YOT was part of the Education Department in the Local Authorities, rather than Children's Services. The impact of the location of the YOT portfolio within local authorities on the accessibility of children's social rights and entitlements may be an area for further investigation.

[110] This will increase to 20 hours per day if the proposals in the recent White Paper on sentencing reform are implemented (MoJ, 2020).

only requires that "the court must obtain and consider information about the place proposed to be specified in the order" (Schedule 1, section 14 of the *Criminal Justice and Immigration Act 2008*). This limitation of the legislative requirements enables the court to facilitate a violation of one of children's most fundamental of children's rights through imposing a curfew – their right to safety.

The other barrier – that of placing partial responsibility for breach action with the Electronic Monitoring Service – is problematic quite simply because they EMS are unable to investigate the reasons for the violations. They cannot establish whether there is an acceptable reason for the violations, as is the requirement for failures to comply with statutory elements of criminal justice orders. This means that children can be unfairly issued with two warning letters – placing them one step away from being breached.

7.5 Conclusion

This chapter has highlighted several of this study's findings which raise significant concerns about the decisions, processes, and outcomes for young people who fail to comply with criminal justice orders. While there was evidence of some 'children first' principles on an organisational level in Pengaron, and while some practitioners in both YOTs exhibited a commitment to one or more of these principles, these were not applied with equal conviction in relation to decisions around non-compliance. Moreover, only a handful of practitioners (all from Pengaron), supported the overarching aim of 'children first' as expressed in Chapter 1 – that of prioritising the maximisation of children's well-being in every decision and process. Even so, their ability to realise this aim was impeded by the overwhelming concerns with 'process' (*National Standards*) and 'risk' within the YOTs.

Some barriers to implementing 'children first' practice have also been identified. Some of these are legislative / procedural and could be changed with amendments to the legislation / procedures, but it must be recognised that even if these barriers were mitigated, other barriers remain. As evidenced throughout Chapters 5, 6 and 7, there were a multitude of practices which were not in keeping with a 'children first' philosophy which were not a result of procedural or legislative constraints, but rather of organisational policies, individual values, beliefs, and identity, and a lack of confidence among practitioners to challenge inadequate service provision / delivery. Without changing these aspects of practice, 'children first' is unlikely to be attained.

Conclusion

Research questions revisited

This investigation sought to establish whether, and to what extent, breach practice in Welsh Youth Offending Teams is underpinned by a 'children first' philosophy. Four interrelated questions guided the study; these are briefly addressed before concluding this thesis with some final thoughts and recommendations.

1. How can the notion of 'children first' youth justice be understood in the context of Welsh policies, and how is it interpreted by Youth Offending Teams and Youth Court magistrates in Wales?

In Chapter 1 (section 1.4), it was argued that without a clear understanding of the concept of 'children first', attempting to assess its effectiveness as a guide to youth justice practitioners would be effectively impossible. Consequently, a working definition of 'children first' was proposed for the purpose of this investigation. This built upon Welsh social policy and youth justice strategies, as well as the wider academic literature, campaigning material, and international rules / guidelines on children's rights and child-friendly justice. While it was not assumed that this interpretation of 'children first' would necessarily be shared by practitioners of youth justice, it was expected that there would be some similarities, at least.

What was not expected, was the extent to which practitioners were unfamiliar with the concept of 'children first' and the Welsh Government's latest youth offending strategy – *Children and Young People First* (Welsh Government and YJB, 2014). While managers were familiar with the strategy and one of the Heads of Service cited 'children first' as an influence on breach practice, practitioners were oblivious to the strategy. By contrast, everybody was very much aware of the *National Standards* (MoJ and YJB, 2013).

As for their interpretation(s) of 'children first' (when asked), overwhelmingly, it was characterised as 'meeting the needs' of the child. This meant addressing accommodation issues, children's educational needs, substance use and mental health needs: essentially, the 'key performance indicators' that the Welsh Government has set for YOTs. This interpretation of 'children first', therefore, consisted only of securing children's basic rights.[111] It was not concerned with subjective aspects of children's well-

[111] And this investigation revealed that, often, even these basic rights were not ensured.

being, such as enabling them to have and to pursue aspirations. Ensuring the 'voice' and meaningful participation of children, and access to their broader fundamental rights and entitlements as young citizens of Wales, were not identified as principles of 'children first'; and neither were the principles of 'doing no harm'; the primacy of children's welfare and 'best interests'; nor the promotion of inclusive and skill-building interventions.

2. What influences children's (non)compliance with criminal justice orders?

In the planning phase for this study, it was determined that children's views would have to form a central part of the investigation. The children's views proved invaluable, challenging and reinforcing views held by various adult participants about children's reasons for non-compliance.

It is clear service failures had a direct impact on many children's ability or perceived ability to comply with their orders. These failures were experienced outside the Youth Justice System – most notably in relation to Children's Services and education providers – but also from within. The treatment that some children were subjected to by magistrates, Referral Order Panel members, and a small minority of case managers, constituted outright violations of their rights, not least to be treated with dignity. It is no wonder that some of these children subsequently refused or were reluctant to comply with the requirements of their orders.

The effects of these service failures were compounded by particular sentencing decisions, especially those which included an electronically-monitored curfew (EMC). The frequency with which an EMC was imposed, and subsequently violated and improperly investigated, hence propelling children towards breach proceedings, is a significant concern. Children's compliance was further affected by a persisting emphasis in supervision sessions on their offending behaviour. The quality of their relationship with their case managers also had a significant impact; although a good relationship with their case manager was unlikely to be sufficient to help them to overcome barriers to compliance arising from service failures which they had to navigate daily.

Perversely, the aspects of their YOT involvement which promoted their engagement – such as the opportunities for building skills, work experience, and recreational activities – also encouraged some to try to prolong their involvement in the YJS. Together with the preference expressed by some children for a custodial sentence, this really accentuates the extent of deprivation of their rights and entitlements and the failure of universal services to uphold their responsibilities to these children.

3. How do Youth Offending Teams and Youth Court magistrates respond to non-compliance with criminal justice orders, and what guides their decisions? Specifically, is there any evidence of a 'children first' philosophy underpinning their decisions?

The answer to the first part of this question – how they respond to non-compliance – is: variably. Discretion was exercised to a considerable degree, as evidenced by the lack of consistency between and within individual case files. It can, of course, be argued that inconsistencies should be expected if decisions are made based on the circumstances of individual children. These inconsistencies were not themselves problematic; rather, it was the way in which they reflected a whole range of influences which had less to do with the individual circumstances of the child than with the beliefs, values, and 'professional identity' of the case manager. Thus, there were those who breached based on a belief that children had to be held accountable; those who gave children 'the benefit of the doubt' and gave them second and third 'chances' (still holding them responsible); those who advocated for punishment; those who breached because they feared that the child posed a 'risk' to the public and that they would be held accountable for failing to breach if the child committed a serious offence; and those (minority) who tried to avoid breaching at all costs due to their belief in the harmful impact of contact with the justice system. But permeating everybody's breach practice, to a greater or lesser degree, was a 'three-strikes' rule, falsely attributed to the *National Standards* (MoJ and YJB, 2013).

Was there evidence of a 'children first' philosophy underpinning breach decisions? Certainly, the three practitioners in Pengaron who did their utmost not to breach children based on concerns over the harm it would cause had the well-being of the children as their primary consideration. There were also those who breached in the hope that it would motivate the young person to (re)engage with the YOT which they believed would improve the child's well-being or life chances. Both examples go some way towards exemplifying 'children first' decision-making, insofar as they are concerned with the child's well-being. However, neither constitute 'children first' as expressed in the first chapter in this thesis, since they encompass some, but not all, of the principles.

Notably absent in both YOTs were the principles of service accountability (in relation to breach); an understanding of 'welfare needs' as deprivations fundamental rights and entitlements; and the primacy of the welfare principle. In Llanfadog, opportunities for meaningful participation and inclusive interventions were very limited. The clearest

indicator of how breach practice was not underpinned by a 'children first' philosophy in either YOT, however, was in the prioritisation of 'risk' and reputation, as well as the responsibilisation of children, in relation to non-compliance. Even when some of the 'children first' principles were evident in many aspects of (some) practitioners' work with the young people, they tended be less prominent when non-compliance became an issue.

In court, the injustices were compounded. Children were clearly pleading 'guilty' to breach offences without having properly understood the charge. Their understanding of the proceedings and outcomes was further impeded by the poor quality of the efforts made by magistrates to engage them. Moreover, the circumstances of their non-compliance were not adequately investigated or were not investigated at all; and, in many cases, rather than advocating for the best outcome for the child in breach reports, the YOTs' recommendations for sentencing were somewhat tailored to what they thought the magistrates were likely to impose. This effective absence of due process, combined with the YOTs' tendency to breach despite the presence of barriers to compliance, resulted in a systematic 'responsibilisation', criminalisation, and punishment of children for offences for which their 'guilt' was doubtful (breach of statutory order). These outcomes, and the underpinning decisions and processes, are far removed from the aim and principles of 'children first' youth justice.

4. What impact do these decisions have on the children concerned, and what are the implications for youth justice locally and nationally?

Few of the children who participated in this study complained about being breached. While they made connections between their experiences of service failures and their likelihood to comply, breach seemed largely 'accepted' – a response they expected if they failed to comply. This is not a positive finding. It certainly shows that it has been instilled into the young people that if they fail to comply, there will be 'consequences'. But this, clearly, does not stop some children from failing to comply, and is antithetical to 'children first'. It seems that legitimacy has been imbued into the process by appealing to the idea of taking responsibility as indicative of 'maturity' or 'adulthood'. When this is juxtaposed with a characterisation of refusing to take responsibility as being 'childlike', or 'immature', it is not surprising that many of the young people (who would abhor being referred to as 'children') accept breach as a 'consequence'. This is despite the breach process, in its current application, being inherently unfair and disadvantageous to the child.

Before turning to address the second part of the question (which concludes the thesis), it is important to highlight that the breach response in many cases was not only unjust; it also failed spectacularly to achieve the statutory aim of the youth justice system – preventing offending. Despite the so-called 'chaos' in the lives of the young people who had breach offences on their records – which was, in fact, a manifestation of significant rights violations and deprivation of entitlements – they were often sentenced to orders whose requirements would be difficult for the most organised and conscientious of people to comply with. Despite clear evidence indicating that these sentences were not working, they continued to be imposed. Together, these children's non-compliance and persistent offending resulted in numerous court appearances every year, such that they could almost be seen as part of the system. Some were in court more often than they were in school. The labelling effects of such frequent contact with the system were compounded by further labelling through the excessive emphasis on offending behaviour during YOT interventions and processes, making the prospect of reducing their offending even more distant.

Concluding thoughts and recommendations for youth justice policy and practice

Evidently, the idea of 'children first' was not commonplace among practitioners. It was certainly not understood on any organisational level as a *philosophy* which should inform, guide, and give meaning to all decisions and interventions with children in conflict with the law (Haines and Drakeford, 1998). Given the primacy of the *Standards* in both the practitioners' and the managers' decision-making, the incorporation of 'children first' as the *guiding principle* in the latest edition (MoJ and YJB, 2019) may facilitate a change in breach practice to better reflect a philosophy of 'children first'. That said, the iteration of 'children first' in these *Standards* is limited, missing key principles or aspects of 'children first' identified in the wider academic literature, children's rights rules and guidelines, and in the Welsh 2014 strategy. For example, the *Standards* state that children's rights must be "recognised", along with their needs, capacities, and potential. However, this is not the same as stating that their rights must be upheld, and that YOTs and universal services are accountable for ensuring that children can access their rights (as per the Welsh strategy).

Moreover, even the YJB is not consistent in its representations of 'children first'. While in the *Standards*, 'children first' is the *guiding principle*, in the YJB's recent Business Plan, achieving a 'children first' youth justice system is identified as one of five strategic objectives (YJB, 2020). As Bateman observes, this suggests an understanding of

‘children first’ as an “independent goal to be pursued simultaneously with, but independently of, those other objectives, rather than a philosophical stance that is fundamental to the way in which those other objectives are pursued” (Bateman, 2020:6).

Further, despite gaining traction with the YJB, the idea of ‘children first’ is not going unchallenged. Already, there is backlash from HM Inspectorate of Probation who, in their latest annual report on YOT inspections, are critical of the “mantra” of ‘children first’:

> “While it is right that each child’s own welfare and experience of trauma must be addressed – as reflected in the mantra ‘child first, offender second’ – a sizeable proportion of these children do also present a risk to others, including their own families. For that reason, it is important not to lose sight of the second part of this formulation, which can happen where YOTs become completely subsumed within children’s services departments. In this case, they can lose their separate identity as youth offending teams, which we’ve found can have a detrimental impact on their performance.” (HMIP, 2020:5)

This ‘detrimental impact’ on performance, it seems, relates to inadequate planning around the child and the public’s safety:

> “As some YOSs move to more ‘child-friendly’ plans, it appears that issues relating to risk of harm to others and safety and wellbeing are not being included in these plans… Planning was being written for what the child would do while subject to YOT intervention but did not specify the work the YOT and other agencies would also be doing to keep the child or the public safe.” (HMIP, 2020:31)

HMIP’s attribution of YOTs neglecting safety planning to the “loss of a separate [criminal justice] identity” – the latter implicitly attributed to an uncritical adoption of the ‘mantra’ of ‘children first’ – does not follow. Safety planning is surely intrinsic to the ‘children first’ principles of doing no harm, prioritising their welfare and best interests, and holding services to account. Contrary to the impression given by this report, subsuming YOTs into children’s services departments or universal youth services may be highly desirable. As this study has demonstrated, practitioners’ identity as agents of the criminal justice system or ‘youth *offending* workers’ was a barrier to addressing children’s welfare needs – including their safety and, by extension, the public’s safety. It was also a barrier to

providing inclusive, skill-building, future-oriented interventions which promote children's (re)integration into their community. What the HMIP's findings *do* suggest is that 'children first' perhaps has something of a floating/empty signifier about it – that those claiming it as their approach to youth justice practice project their own meanings on to it. Far from making a case against it, this reinforces the need for a clear, agreed-upon definition of 'children first' if it is to result in tangible positive outcomes for *all* children in, or at risk of entering, the Youth Justice System.

Nonetheless, with such resistance to the idea of 'children first' within the inspectorate, the recommendation made by the Commission on Justice in Wales (2019) to fully devolve justice to Wales appeals for its potential to pave the way for achieving justice for children who infringe criminal law. Clearly, having to negotiate every strategy, 'blueprint', or guidance with the Ministry of Justice is a recurring obstacle for the Welsh Government to straightforwardly realise their vision of 'children first' youth justice. As for the YOTs, being quality-assessed by an inspectorate which has such reservations about the desirability of a 'child first' approach presents analogous obstacles for them. If such constitutional change were to be achieved, what, then, could and should Wales do differently?

First, the legislation in relation to curfew requirements should be amended so that a curfew can only be imposed if, following a thorough assessment of the risk posed to the child, it is proven to the satisfaction of the court that this is in the child's 'best interests'. This would ensure that the child's right to safety is upheld (in contrast to the findings of this study) and would likely result in a significant reduction in the proportion of electronically-monitored curfews which are violated.

Second, the legislation which specifies a timeframe for the maximum number of unacceptable failures to comply before breach proceedings are instigated should be amended. It is absurd that, even if a child complies with every element of an order for 11 months after a difficult start (e.g. two instances of unacceptable non-compliance in the first week), another single missed appointment without a reasonable explanation can trigger breach proceedings. If a time frame is needed, this should be a maximum of three months. However, in order to properly reflect the prioritisation of *engagement* (substantive compliance) rather than formal compliance, the so-called 'three-strikes' rule should be abolished. Provisions should be made for those instigating breach proceedings to have to demonstrate that no progress has been made towards achieving intermediary outcomes for positive change, as well as the occurrence of instances of formal non-compliance.

Third, the majority of requirements which can be attached to a YRO should be abolished. The supervision requirement should be sufficient, along with the ISS and electronically-monitored curfew requirements for a minority of cases (as alternatives to custodial sentences). This would enable the young person's case manager – who is best placed to know what is in the child's best interests – to determine, *with the child*, how best to deliver the order. At the very least, requirements whose purpose is exclusively to meet children's basic welfare needs (such as the Education Requirement; the Residence Requirement; the Local Authority Residence Requirement; the Drug Treatment Requirement; the Drug Testing Requirement; the Mental Health Treatment Requirement; and the Intoxicating Substance Treatment Requirement) should be abolished. Children should never be punished for failing to comply with interventions which were imposed to address basic welfare needs.

Fourth, youth court hearings should be convened in buildings separate to the magistrates' courts, and in a setting that is much more 'child-friendly' and conducive to proper engagement. Magistrates should be trained in, and implement, restorative practice in the hearings, similar to the *Bureau* process.

Fifth, and finally, a critical review of the institution of Youth Offending Teams should be undertaken. Notwithstanding the rhetoric and intention behind the creation of YOTs – delivering a 'joined-up solution to joined-up problems' – it is clear from the findings of this study that, in some areas at least, they have created structural barriers in respect of accessing education and social welfare services. They have also resulted in a strange phenomenon whereby some social workers appear to 'forget' that they are social workers, perceiving themselves to be first and foremost agents of the criminal justice system. Returning to a model similar to the adolescent teams within the Social Services Departments prior to the creation of YOTs might be considered, as well as new *partnerships* between different agencies which are not necessarily institutionalised. This could remove many of the barriers faced by YOTs in ensuring access to mainstream, universal services for the children in their care.

While the above recommendations would require constitutional change,[112] there are some actions that are currently within the Welsh Government / local authorities' power to take which could help to achieve their vision of 'children first' youth justice:

- Ensure that children in the youth justice system have access to independent advocacy. Just as children leaving the care system get Personal Advisers on a

[112] Unless, of course, they were implemented by the UK Government.

voluntary basis until early adulthood, so should those who exit the YJS. These personal advisers should be involved with the young person during their order to establish a key relationship which will continue after their transition out of the system (or into probation).

- Establish 'justice panels' in each local authority area. They would be responsible monitoring young people's progress with their orders and holding accountable those services provided by adults which have an impact on the lives of young people (see, e.g. Lammy, 2017 and Drakeford, 2018). They should include community members and magistrates who are fully-trained and endorse the principles and values of the Welsh youth offending strategy - promoting social justice for children and their families through access to their citizenship-based rights and entitlements. These panels should be reconvened every two to three months, with the same members which were present at the initial panel. The panel should review the order and make any changes that are necessary to reflect the circumstances of, and the support required by the child and their family. This includes actively holding support services to account where they have failed in their duties to the child and family, and not persisting with a particular statutory requirement where it is clear that it is unworkable.

There are also numerous actions that YOTs, magistrates, and lawyers could take to improve practice within the system as it currently stands, including:

Youth Offending Teams

- Undertake a 'rights and entitlements' check at the beginning of every child's involvement with the YOT, at every stage (not just limited to pre-court *Bureau*).
- Undertake a 'risk assessment' of the harm posed *to* the child by every process, intervention, and decision, and strive to minimise the harm caused.
- Abandon 'punishment' as a rationale for sentencing recommendations.
- Stop recommending and imposing the majority of YRO recommendations; instead, recommend either a sole requirement of supervision; a sole requirement of ISS (in the minority of cases where custody is a likely alternative); or a supervision requirement plus an electronically-monitored curfew requirements only if it is an effective strategy for promoting the child's well-being.

- Actively seek to tailor interventions to the interests and aspirations, as well as the needs, of each child. This would make their rights and entitlements 'real'.
- Stop over-reliance on offending behaviour worksheets – clearly they do not work as a 'one size fits all' and are often not what could be considered effective practice.
- Review the progress and appropriateness of the content of children's orders on a two/three-monthly basis, with the child.
- YOT staff: investigate every incidence of non-compliance with the child – even the most minor of curfew violations – and establish whether there was a reasonable explanation for it. Never take formal breach action (e.g. warning letters, breach instigation) if there is a reasonable explanation for the non-compliance, taking into account the failings of the state. Factors such as accommodation disruption or instability, conflict within the family, serious substance misuse, general 'chaos' in young people's lives, should not be invoked at the last minute as 'exceptional circumstances' for staying breach proceedings.
- Apply the principle of 'defensible decision-making' to decisions *to* breach young people as well as decisions not to breach them. The 'defensibility threshold' should not be lower for making decisions to *proceed* with breaching someone than for decisions not to breach.
- Ensure that case managers *always* accompany the children they are supervising to court hearings, unless this is not possible. This is not only to show support, but also to be available to answer questions by the magistrates. Where it is not possible for the case manager to attend, ensure that the YOT representative is familiar to the young person and with their case.
- Ensure that the breach reports are comprehensive and explain the circumstances of the non-compliance and the efforts made by the YOT to support their engagement.
- Make recommendations in pre-sentence reports and breach reports based on a presumption of horizontal sentencing, or 'down-tariffing', rather than vertical, or 'up-tariffing'.
- For those who have not done so already, change the name of the service from 'Youth Offending Team/Service' to discourage the perception within and outside the team that their only purpose is to address children's offending. The name 'Youth Justice Service' would better reflect the 'child first' aim of promoting social justice in the children's lives.
- Where appropriate, use the principles of 'trauma-informed practice' in designing and implementing court orders.

- Ensure that the training provided to Referral Order panel volunteers is in keeping with the principles of 'children first' as according to the Welsh youth offending strategy, and that developing engagement skills is central to the training. Rigorous selection processes should be employed by YOTs to ensure that the values and attitudes of volunteers – and YOT staff – are compatible with 'children first'. Candidates whose values are in conflict with those of 'children first' should be rejected.

Magistrates and lawyers

- Ensure that, in breach proceedings, as with all other proceedings, the child has understood the substance of the charge *before* they are asked how they plead. Always seek to identify whether there was a reasonable explanation for the non-compliance, and never hold children accountable for the failures of services to uphold their duties to the children.
- Guarantee due process (including the principles of legality and proportionality, the presumption of innocence, the right to a fair trial, the right to legal advice, the right to access to courts and the right to appeal) for children. This "should not be minimised or denied under the pretext of the child's best interests" (Council for Europe, 2010:19).
- Avoid using jargonistic and exclusionary language in all interactions with the young people and their families.
- Ensure a professional understanding of children's rights and entitlements under Welsh law.
- Solicitors: undertake specialist training on youth court advocacy and ensure that communication is always established with the child in a timely manner. This should provide sufficient opportunity to facilitate the child's meaningful participation before and during the hearings, and for the solicitor to be able to successfully advocate for the child in court.

It should be clear by now that there remains much to be done by way of attaining the Welsh Government's vision of a Youth Justice System guided by a 'children first' philosophy. Nevertheless, implementing even the simplest among the above recommendations would go a long way towards reducing the injustices identified in this study, both within and beyond the confines of the formal youth justice response.

Bibliography

Alder, C. and Wundersitz, J. (1994) 'New Directions in Juvenile Justice Reform in Australia', in Alder, C. and Wundersitz, J. (eds) *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism?* Canberra: Australian Institute of Criminology.

Alderson, P. (1995) *Listening to children: Children, ethics and social research.* London: Barnardos.

Alderson, P. and Morrow, V. (2004) *Ethics, social research and consulting with children and young people*. London: Barnardos.

All Party Parliamentary Group for Children (2010) *Children and Young People in the Youth Justice System: Report of seminars organised by the All Party Parliamentary Group for Children 2009/10*. London: National Children's Bureau.

Anderson, V., Anderson, P., Northam, E., Jacobs, R. and Catroppa, C. (2001) 'Development of executive functions through late childhood and adolescence in an Australian sample.', *Developmental Neuropsychology*, vol. 20(1), pp. 385−406.

Andrews, D.A. and Bonta, J. (2007) The Risk-Need-Responsivity Model of Assessment and Human Service in Prevention and Corrections: Crime-Prevention Jurisprudence', *The Canadian Journal of Criminology and Criminal Justice*, vol.49, pp. 439-464.

Andrews, D.A, Bonta, J. and Hoge, R.D. (1990) 'Classification for effective rehabilitation: Rediscovering psychology', *Criminal Justice and Behaviour*, vol. 17, pp. 19–52.

Annison, J., Eadie, T. and Knight, C. (2008) 'People first: probation officer perspectives on probation work', *Probation Journal*, vol. 55(3), pp.259-71.

Ariès, P. (1962) *Centuries of Childhood: A Social History of Family Life* (translation); New York: Jonathan Cape Ltd. Available online: https://monoskop.org/images/d/d0/Ariès_Philippe_Centuries_of_Childhood_A_Social_History_of_Family_Life_1962.pdf [accessed 19.03.2020]

Armstrong, D (2004) ‘A risky business? Research, policy and governmentality and youth offending’, *Youth Justice* vol. 4(2), pp. 100–116.

Bailey, R. and Williams, B. (2000) *Inter-agency Partnerships in Youth Justice: Implementing the Crime and Disorder Act, 1998*. Sheffield: University of Sheffield, Joint Unit for Social Service Research.

Baker, K (2004) ‘Is Asset really an asset? Assessment of young offenders in practice’, in R. Burnett and C. Roberts (eds.) W*hat Works in Probation and Youth Justice Developing Evidence-based Practice.* Cullompton: Willan Publishing.

Baker, K (2008) ‘Risk, uncertainty and public protection: Assessment of young people who offend’, *British Journal of Social Work* , vol. 38, pp. 1463–1480.

Barbour, R. (2007) *Doing Focus Groups.* London: Sage.

Barry, M. (2006) *Youth Offending in Transition*; Abingdon-on-Thames: Routledge.

Bateman, T. (2008) ‘Target practice: sanction detection and the criminalisation of children’, *Criminal Justice Matters*, vol. 73(1), pp. 2–4.

Bateman, T. (2011); ‘We now breach more kids in a week than we used to in a whole year’: The punitive turn, enforcement and custody’, *Youth Justice*, vol. 11 (4), pp. 115 – 133.

Bateman, T. (2013) *Children in conflict with the law: An overview of trends and developments – 2012*. National Association for Youth Justice briefing, July 2013.

Bateman, T. (2014) ‘Where has all the youth crime gone? Youth justice in an age of austerity’, Children and Society, vol.28(5), pp. 416-424.

Bateman, T. (2015) *The state of youth justice 2015: An overview of trends and developments*. London: NAYJ.

Bateman, T. (2015b) ‘Trends in Detected Youth Crime and Contemporary State Responses’, in B. Goldson and J. Muncie (eds), Youth Crime & Justice (2nd edition). London: Sage.

Bateman, T. (2017) *The state of youth justice 2017: An overview of trends and developments*. London: National Association for Youth Justice.

Bateman, T. (2020) *The state of youth justice 2020: An overview of trends and developments*. London: National Association for Youth Justice.

Baxter, P., & Jack, S. (2008) ‘Qualitative case study methodology: Study design and implementation for novice researchers’. *The Qualitative Report*, vol. 13(4), pp. 544–559.

Becker, H. (1982) ‘Culture: A Sociological View’, *Yale Review*, 71, pp. 513-527.

Beinart, S., Anderson, B., Lee, S. and Utting, D. (2002) *Youth at Risk? A National Survey of Risk Factors, Protective Factors and Problem Behaviour among Young People in England, Scotland and Wales.* London: Communities that Care / Joseph Rowntree Foundation.

Berger, R. (2015) ‘Now I see it, now I don’t: researcher’s position and reflexivity in qualitative research’, *Qualitative Research*, vol. 15(2), pp. 219-234.

Blakemore, S.J. and Choudhury, S. (2006) ‘Development of the adolescent brain: Implications for executive function and social cognition.’, *Journal of Child Psychology and Psychiatry*, vol. 47(3), pp. 296–312.

Blumer, H. (1962) ‘Society as Symbolic Interaction’, in A.M. Rose (ed.), *Human Behaviour and Social Processes*. London: Routledge and Kegan Paul.

Bonta, J. and Andrews, D.A. (2017) *The Psychology of Criminal Conduct*. New York: Routledge.

Boone, M. and Herzog-Evans, M. (2013) ‘Offender supervision and decision-making in Europe’, in F. McNeill and K. Beyens (eds.), *Offender Supervision in Europe*. New York: Palgrave Macmillan.

Boone, M. and Maguire, N. (2018) *The Enforcement of Offender Supervision in Europe Understanding Breach Processes*. Abingdon: Routledge.

Bottoms, A. (2001) ‘Compliance and community penalties’, in A. Bottoms, L. Gelsthorpe, and S. Rex (eds), *Community Penalties. Changes and Challenges*. Cullompton: Willan Publishing.

Boucher, D. (2019) ‘Reclaiming history: dehumanization and the failure of decolonization’, *International Journal of Social Economics*, vol. 46(11), pp. 1250-1263.

Bourdieu, P. (1984) *Distinction: A Social Critique of the Judgement of Taste*. London: Routledge.

Bourdieu, P. (1986) ‘The Forms of Capital’, in J. G. Richardson (Ed), *Handbook of Theory and Research for the Sociology of Education*. Westport, CT: Greenwood Press.

Bourdieu, P. (1989) ‘Social Space and Symbolic Power’, *Sociological Theory*, vol. 7, pp. 14-25.

Bourdieu, P. and Wacquant, L. (1992) *An Invitation to Reflexive Sociology*. Cambridge: Polity Press.

Bourgon, G. and Bonta, J. (2014) ‘Reconsidering the responsivity principle: A way to move forward’, *Federal Probation*, vol. 78(2), pp. 3–10.

Braithwaite, V. (2003) ‘Dancing with tax authorities: motivational postures and non-compliant actions’, in V. Braithwaite (ed.) *Taxing Democracy: Understanding Tax Avoidance and Evasion*. Aldershot: Ashgate.

Briggs, A. (1999) *England in the Age of Improvement*. London: Folio.

British Society of Criminology (2015) *Statement of Ethics*. https://www.britsoccrim.org/documents/BSCEthics2015.pdf [accessed May 2017]

Bryman, A. (2016) *Social Research Methods (5th edition)*. New York: Oxford University Press.

Bryman, A. and Cassell, C. (2006) 'The Researcher Interview: A Reflexive Perspective'. *Qualitative Research in Organizations and Management: An International Journal*, vol. 1(1), pp. 41-55.

Butler, I. and Drakeford, M. (2012) 'Children's rights as a policy framework in Wales' in J. Williams (ed.) *The United Nations Convention on the Rights of the Child in Wales*. Cardiff: University of Wales Press.

Byrne, B. and Case, S. (2016) 'Towards a positive youth justice', *Safer Communities*, vol.15(12), pp.69-81.

Cadman, S. (2005) 'Proportionality in the youth justice system', in T. Bateman and J. Pitts (eds.) *The RHP Companion to Youth Justice*; Lyme Regis: Russell House.

Case, S. and Haines, K. (2009) *Understanding Youth Offending: Risk factor research, policy and practice*. Cullompton: Willan.

Case, S. and Haines, K. (2015) 'Children First Offenders Second: the centrality of engagement in Positive Youth Justice', *The Howard Journal of Criminal Justice*, vol. 54(2), pp.157-175.

Case, S. and Haines, K. (2018) 'Transatlantic 'Positive Youth Justice': a distinctive new model for responding to offending by children?', *Crime Prevention and Community Safety*, vol. 20, pp. 208–222.

Case, S. and Haines, K. (2020) 'Abolishing Youth Justice Systems: Children First, Offenders Nowhere', *Youth Justice*, available online: https://journals.sagepub.com/doi/10.1177/1473225419898754 [accessed 14.04.2020]

Cavadino, M. and Dignan, P. (2006) *Penal Systems: A Comparative Approach*. London: Sage.

Centre for Justice Innovation (CJI) and Institute for Crime and Policy Research, Birkbeck (ICPR) (2020) *Young people's voices on youth court*. Available online: https://justiceinnovation.org/sites/default/files/media/documents/2020-05/20200512_young_peoples_voices_on_youth_court_final.pdf [accessed 29.05.2020]

Centre for Social Justice (2012) *Rules of Engagement: Changing the heart of youth justice*. London: Centre for Social Justice.

Chabot, C., Shoveller, J., Spencer, G. and Johnson, J. (2012) 'Ethical and Epistemological Insights: A Case Study of Participatory Action Research with Young People', *Journal of Empirical Research on Human Research Ethics,* vol. 7(2), pp. 20-33.

Charmaz, K. and Bryant, A. (2016) 'Constructing Grounded Theory Analyses' in D. Silverman, *Qualitative Research (4th edition)*. London: Sage.

Children's Commissioner for Wales (2018) *Policy Position Paper: Adverse Childhood Experiences*. Available online: https://www.childcomwales.org.uk/wp-content/uploads/2018/10/ACEs-Position-Paper-CCFW-Sally-Holland.pdf [accessed 19.07.2019]

Clarke, J. (2009) 'Histories of Childhood'; in D. Wyse (Ed.), *Childhood Studies: An Introduction*. New Jersey: John Wiley & Sons.

Clutton, S. (2007) 'Devolution and the Language of Children's Rights in the UK'. In A. Invernizzi and J. Williams (Eds.), *Children and Citizenship*. London: Sage.

Coleman, J. (2000) 'Young People in Britain at the Beginning of a New Century', *Children and Society*, vol. 14, pp. 230–242.

Commission on Justice in Wales (2019) *Justice in Wales for the People of Wales.* Available online at: https://gov.wales/sites/default/files/publications/2019-10/Justice%20Commission%20ENG%20DIGITAL_2.pdf [accessed 17.01.2020]

Comte, A. (2009 [1865]) *A General View of Positivism.* Cambridge: Cambridge University Press.

Cordis Bright (2017) *Evaluation of the Enhanced Case Management approach: Final Report*. Available online: https://www.cordisbright.co.uk/admin/resources/170328-evaluation-enhanced-case-management-approach-en.pdf [accessed 18.01.2020]

Coster, W. (2012) 'Social constructions of childhood'. In P. Zwozdiak-Mayers (Ed.), *Childhood and Youth Studies Series: Childhood and youth studies*. London: Learning Matters.

Council of Europe (2010) *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*. Strasbourg: Council of Europe Publishing.

Coyne, I. (2010) 'Research with Children and Young People: The Issue of Parental (Proxy) Consent', *Children and Society, vol.* 24(3), pp. 227-237.

Creaney, S. (2014) 'The benefits of participation for young offenders', *Safer Communities,* vol. 13(3), pp.126-132.

Creswell, J. W. (2013) *Qualitative inquiry and research design: Choosing among five approaches*. (third edition). Thousand Oaks, CA: Sage.

Cross, N., Evans, J. and Minkes, J. (2003) 'Still Children First? – Developments in Youth Justice in Wales'; *Youth Justice,* vol. 2(3), pp. 151-162.

Deering, J. (2011) *Probation Practice and the New Penology: Practitioner Reflections.* Oxon: Ashgate.

Delmage, E. (2013) 'The Minimum Age of Criminal Responsibility: A Medico-Legal Perspective', *Youth Justice,* vol.13(2), pp.102-110.

Department for Education (2018) *Participation in Education, Training and Employment by 16-18 year olds in England: End 2017*. London: Department for Education.

Dingwall G (2009) ‘Resolution through Devolution? Policing, Youth Justice and Imprisonment in Wales’, *Crimes and Misdemeanours: Deviance and the Law in Historical Perspective,* vol. 3(1), pp. 5-19.

Dingwall, R., Eekalaar, J., and Murray, T. (1983) *The Protection of Children. State Intervention and Family Life*. Blackwell: Oxford.

Drakeford, M. (2001) ‘Children, Rights and Welfare: Towards a New Synthesis’, *Youth Justice*, vol.1(1), pp. 40-44.

Drakeford, M. (2010) ‘Devolution and youth justice in Wales’, *Criminology and Criminal Justice*, vol. 10(2), pp.137-154.

Drakeford, M. (2018) *Labour Leadership Manifesto: 21st Century Socialism*. Available online: https://skwawkbox.org/wp-content/uploads/2018/11/manifesto-english-print.pdf [accessed 17.09.2020].

Draper, H., Wilson, S., Flanagan, S. and Ives, J. (2009) ‘Offering payments, reimbursement and incentives to patients and family doctors to encourage participation in research’. *Family Practice* 26(3): 231-238.

Durkheim, E. (1982 [1895]) *The Rules of Sociological Method*. New York: Free Press.

Economic and Social Research Council (2015) *ESRC Framework for Research Ethics*. https://esrc.ukri.org/files/funding/guidance-for-applicants/esrc-framework-for-research-ethics-2015/ [accessed May 2017]

Ellis, T., Hedderman, C. and Mortimer, E. (1996) *Enforcing community sentences. Home Office Research Study 158.* London: Home Office.

Evans, J. (2006) *Welfare versus Punishment? The Careers of Young Offenders with a Background in Public Care*. Cardiff: Cardiff University.

Evans, J. (2016) ‘Artful Dodgers: The role of unreliable narrators in the production of authorized histories and assessments of young people in conflict with the law’, *Deviant Behavior*, vol. 38(9), pp. 1042-1058.

Evans, J. (2017) ‘‘Objects of concern’ or ‘risky young offenders’? Assessment and intervention with children in the public care and youth justice systems of England and Wales’, in J. Ulmer and M. Bradley (Eds.) *Punishment Decisions: Locations of Disparity – Volume 2 in the ASC Division on Corrections and Sentencing Handbook Series.* New York: Taylor & Francis.

Evans, J., Jones, R. and Haines, K. (2017) ‘The Criminal Justice System in Wales’ in Case, S., Johnson, P., Manlow, D., Smith, R. and Williams, K. *Criminology*. Oxford: Oxford University Press. Available online at https://arc2.oup-arc.com/access/content/case-student-resources/58ef750f38ec0a0f0070a185 [accessed 23.01.2020]

Evans, J., Kennedy, D., Skuse, T. and Matthew, J. (2020) Trauma-Informed Practice and Desistance Theories: Competing or Complementary Approaches to Working with Children in Conflict with the Law?, *Salus Journal*, vol.8(2), pp. 55-76.

Ezell, M. and Cohen, L. (2005) *Desisting from crime*. Oxford University Press: Oxford.

Farrington, D. (2007) ‘Childhood risk factors and risk-focused prevention’, in M. Maguire, R. Morgan and R. Reiner (eds.) *The Oxford Handbook of Criminology* (3rd edition). Oxford: OUP.

Farrington, D., Coid, J., Harnett, L., Jolliffe, D., Soteriou, N., Turner, R. and West, D. (2006) *Criminal careers up to age 50 and life success up to age 48: New findings from the Cambridge study in delinquent development.* Home Office Research Study 299. Available at: www.crim.cam.ac.uk/people/academic_research/ david_farrington/hors299.pdf [accessed 14.02.2018]

Fergusson, R (2007) ‘Making sense of the melting pot: Multiple discourses in youth justice policy’, *Youth Justice*, vol. 7(3), pp.179–194.

Field, S. (2007) ‘Practice Cultures and the New Youth Justice in (England and) Wales’, *The British Journal of Criminology,* vol. 47(2), pp.311-330.

Field, S. (2015) ‘Developing Local Cultures in Criminal Justice Policy-Making: The Case of Youth Justice in Wales’, in M. Wasik and S. Santatzoglou (eds.) *The Management of Change in Criminal Justice: Who Knows Best?* London: Palgrave Macmillan.

Fox, R. (2013) ‘Resisting participation: critiquing participatory research methodologies with young people’, *Journal of Youth Studies,* vol. 16**(**8), pp. 986.

Fox Harding, L. (1991) *Perspectives in Child Care Policy*. London: Longman.

Garfinkel, H. (1967) *Studies in Ethnomethodology*. Englewood Cliffs, NJ: Prentice-Hall.

Garland, D. (1996) ‘The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society’, *British Journal of Criminology,* vol. 36(4), pp. 445-71.

Gelsthorpe, L and Padfield, N. (eds.) (2003) *Exercising Discretion - Decision-making in the criminal justice system and beyond.* Cullompton: Willan.

Gill, R. (2000) ‘Discourse Analysis’ in M. W. Bauer and G. Gaskell (eds.), *Qualitative Researching with Text, Image and Sound*. London: Sage.

Glaser, B. (1978) *Theoretical Sensitivity*. Mill Valley, CA: Sociology Press.

Glaser, B. (1992) *Basics of Grounded Theory Analysis*. Mill Valley, CA: Sociology Press.

Glaser, B. and Strauss, A. (1967) *The Discovery of Grounded Theory*. Chicago, IL: Aldine.

Glendinning, F., Rodriguez, G., Newbury, A. and Wilmot, R. (2021) *Adverse childhood experience (ACE) and trauma-informed approaches in youth justice services in Wales: An evaluation of the implementation of the enhanced case management (ECM) project The views and experiences of children and youth justice workers.* Bangor: Bangor University.

Glueck S and Glueck E (1939) *One Thousand Juvenile Delinquents*. Cambridge, MA: Harvard University Press.

Goldson, B. (2000) *The new youth justice*; Lyme Regis: Russell House.

Goldson, B. (2001)'The Demonisation of Children: from the Symbolic to the Institutional', in Foley, P., Roche, J. and Tucker, S. (Eds.) *Children In Society: Contemporary Theory, Policy and Practice*. Basingstoke: Palgrave.

Goldson, B. (2010) 'The Sleep of (criminological) reason: knowledge – policy rupture and New Labour's Youth Justice Legacy', *Criminology and Criminal Justice,* vol. 10(1), pp. 155-178.

Goldson, B. and Hughes, G. (2010), 'Sociological Criminology and Youth Justice: Comparative Analysis and Academic Intervention', *Criminology and Criminal Justice,* vol. 10, pp. 211–30.

Goldson, B., Lavalette, M. and McKechnie, J. (eds.) (2002) *Children, Welfare and the State*. London: Sage.

Grandi, L. D. and Adler, J. R. (2016) 'A Study into Breaches of Youth Justice Orders and the Young People Who Breach Them', *Youth Justice,* vol. 16 (3), pp. 205 – 225.

Gray, P. (2019) ''Rights-Based' and 'Children and Young People First' Approaches to Youth Justice' in P. Ugwudike, H. Graham, F. McNeill, P. Raynor, F. S. Taxman, and C. Trotter, in *The Routledge Companion to Rehabilitative Work in Criminal Justice*. London: Routledge.

Gurney, J. (1985) 'Not one of the guys: The female researcher in a male-dominated setting'; *Qualitative Sociology,* vol. 8(1),pp. 42-62.

Haines, K. (2009) 'The dragonisation of youth justice', in W. Taylor, R. Hester and R. Earle (eds.) *Youth justice handbook*. Cullompton: Willan.

Haines, K. and Case, S. (2015) *Positive Youth Justice: Children First, Offenders Second*. Bristol: Policy Press.

Haines, K. and Case, S. (2018) 'The Future of Youth Justice', *Youth Justice,* vol. 18(2), pp. 131–148.

Haines, K. and Drakeford, M. (1998) *Young People and Youth Justice*. London: Macmillan.

Haines, K., Case, S. and Charles, A. (2013) 'The Swansea Bureau: A Model of Diversion from the Youth Justice System', *International Journal of Law Crime and Justice,* vol. 41(2), pp. 167-187.

Haines, K., Case, S., Isles, E., Rees, I., and Hancock, A. (2004) *Extending Entitlement: Making it Real*. Cardiff: Welsh Assembly Government.

Hammersley, M. and Atkinson, P. (2007) *Ethnography: Principles in Practice (3rd edition).* Abingdon-on-Thames: Routledge.

Hampson, K. (2018) 'Desistance Approaches in Youth Justice – The Next Passing Fad or a Sea-Change for the Positive?', in *Youth Justice,* vol. 18(1) pp. 18 –33.

Hart, D. (2010) *Children and Young People in the 'Breach': A Scoping Report on Policy and Practice in the Enforcement of Criminal Justice and Anti-Social Behaviour Orders*. London: National Children's Bureau.

Hart, D. (2011a) *Into the Breach: The Enforcement of Statutory Orders in the Youth Justice System*. London: Prison Reform Trust

Hart, D. (2011b) 'Public protection or public perception? Breach action within the youth justice system', *Safer Communities*, vol. 10(4), pp. 19-27.

Hart, D. and Thompson, C. (2009) *Young people's participation in the youth justice system*. London: National Children's Bureau.

Hayes, D. and Devaney, J. (2004) 'Accessing Social Work Case Files for Research Purposes: Some Issues and Problems', *Qualitative Social Work,* vol. 3(3), pp. 313-333.

Hazel, N. (2008) *Cross-national comparison of youth justice*. London: YJB.

Hedderman, C. and Hough, M. (2004) 'Getting tough or being effective: What Matters?', in G. Mair (ed.) *What Matters in Probation*; Cullompton: Willan.

Hendrick, H. (1994) *Child Welfare: England 1872–1989*. London: Longman.

Hendrick, H. (1997a) 'Constitutional reconstructions of British Childhood: an interpretive survey, 1800 to the present', in A. James & A. Prout (eds.), *Constructing and Reconstructing Childhood*, London: Falmer.

Hendrick, H. (1997b) *Children, Childhood and English Society, 1880–1990*. Cambridge: Cambridge University Press.

Hill, M. and Tisdall, K. (1997) Children and Society. Abingdon: Routledge.

HMIP Her Majesty's Inspectorate of Probation (2020) *Annual report: inspection of youth offending services (2019-2020).* Available online: Annual report: inspection of youth offending services (2019-2020) (justiceinspectorates.gov.uk) [accessed December 2020].

HMPPS Her Majesty's Prison and Probation Service (2018*) HM Prison and Probation Service Business Plan 2018-2019*. London: HMPPS.

Hoffman, S. (2019) 'The UN convention on the rights of the child, decentralisation and legislative integration: a case study from Wales'; *The International Journal of Human Rights,* pp. 1-18.

Hoffman, S. and MacDonald, S. (2011) ' Youth Anti-Social Behaviour in Devolving Wales: A Study of the Tiered Approach in Swansea', *Youth Justice,* vol. 11 (2), pp. 150-167.

Hoffman, S. and Williams, J. (2013) ‘The Beauty of Due Regard: Implementation of the UNCRC’. Child Rights Conference, Tromso Norway.

Hoffman, S. and O’Neill, S. (2018) ‘The impact of Legal Integration of the UN Convention on the Rights of the Child in Wales’. Manchester: Equality and Human Rights Commission.

Hohfeld, W. N. (1913). ‘Some Fundamental Legal Conceptions as Applied in Legal Reasoning’. *Yale Law Journal,* vol. 23, pp. 16-20.

Hohfeld, W. N. (1917). Fundamental Legal Conceptions as Applied in Legal Reasoning. *Yale Law Journal*, vol. 26, pp. 710-770.

Holstein, J.A. and Gubrium, J.F. (1997) *The Active Interview*. Sage: London.

Home Office (1992) *National Standards for the Supervision of Offenders in the Community, 1992*. London: Home Office.

Home Office (1995) *National Standards for the Supervision of Offenders in the Community, 1995*. London: Home Office.

Home Office (1997) *No More Excuses: A new approach to tackling youth crime in England and Wales*. London: Home Office.

Hucklesby, A. (2009) ‘Understanding offenders compliance: A case study of electronically monitored curfew orders’; *Journal of Law and Society,* vol. 36(2), pp. 248-271.

Hucklesby, A. (2018) ‘Non-compliance and the breach process in England and Wales’, in M. Boone and N. Maguire (eds.) *The Enforcement of Offender Supervision in Europe: Understanding Breach Processes.* Abingdon: Routledge.

Hughes, N., Williams, H., Chitsabesan, P., Davies, R. and Mounce, L. (2012) *Nobody Made the Connection: The prevalence of neurodisability in young people who offend*. London: Office of the Children’s Commissioner for England.

James, A. and Adrian, J. (2004) *Constructing Childhood: Theory, Policy, Social Practice*. Basingstoke, UK: Palgrave Macmillan.

James, A. and Prout, A. (eds) (1997) *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood*. London/Bristol: The Falmer Press.

Johansson B. (2010) 'Subjectivities of the Child Consumer: Beings and Becomings'. In Buckingham D., Tingstad V. (eds) *Childhood and Consumer Culture. Studies in Childhood and Youth*. London: Palgrave Macmillan.

Johns, D., Williams, K. and Haines, K. (2017) 'Ecological Youth Justice: Understanding the Social Ecology of Young People's Prolific Offending', *Youth Justice*, vol. 7(1), pp.3-21.

Johns, D., Williams, K. and Haines, K. (2018) *A study of 'prolific' offending by young people in Wales: 2009 – 2015*. Available online: https://wccsj.ac.uk/images/docs/publications/2018/Prolific_Offending_by_Young_People_in_Wales_2009-2015-FINAL-REPORT-2018F.pdf [accessed 20.04.2020]

Jones, J. (2008) 'The Next Stage of Devolution? A (D)evolving Criminal Justice System for Wales', *Crimes and Misdemeanours,* vol. 2(1), pp.1-39.

Jones, R. W. and Scully, R. (2012) *Wales Says Yes: Devolution and the Welsh Referendum*. Cardiff: University of Wales Press.

Judicial College (2017) *Youth Court Bench Book*. Available online: https://www.sentencingcouncil.org.uk/wp-content/uploads/youth-court-bench-book-august-2017.pdf [accessed 19.12.2019]

Judicial College (2019) *The Crown Court Compendium Part II: Sentencing.* Available online: https://www.judiciary.uk/wp-content/uploads/2020/07/Crown-Court-Compendium-Part-II-Sentencing-December-2019-f-4.pdf [accessed 18.08.2020]

Kerslake, A. (1987) 'Unintended consequences?', *Community Care*, vol.10, pp. 18-21.

Kvale, S. (1996) *InterViews: An Introduction to Qualitative Research Interviewing*. Thousand Oaks, CA: Sage.

Laming, H. (2016) *In care, out of trouble: how the life chances of children in care can be transformed by protecting them from unnecessary involvement in the criminal justice system*. London: Prison Reform Trust.

Lammy, D. (2017) The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System. Available online: https://www.gov.uk/government/publications/lammy-review-final-report [accessed 03.05.2020]

Lancy, D. (2015) *The Anthropology of Childhood: Cherubs, Chattel, Changelings*. (2nd Edition). Cambridge: Cambridge University Press.

Lemert, E. (1951) *Social Pathology: A Systematic Approach to the Theory or Sociopathic Behavior*; New York: McGraw Hill.

Lipsky, M. (1980) *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services*. New York: Russell Sage Foundation.

Maruna, S. (2018) 'Review', in Boone and Maguire (eds.) *The Enforcement of Offender Supervision in Europe: Understanding Breach Processes*. Abingdon: Routledge.

Maslow, A. H. (1943) 'A Theory of Human Motivation', *Psychological Review*, vol. 50(4), pp. 370-396.

Maslow, A. H. (1962) *Towards a Psychology of Being*. Princeton: D. Van Nostrand Company.

Maslow, A. H. (1970) *Motivation and Personality*. New York: Harper & Row.

McAlister, S, Carr, N (2014) ‘Experiences of youth justice: Youth justice discourses and their multiple effects’, *Youth Justice*, vol. 14(3), pp. 241–254.

McAra, L. (2004) ‘The Cultural and Institutional Dynamics of Transformation: Youth Justice in Scotland, England and Wales’, *Cambrian Law Review*, vol. 35, pp. 23–54.

McAra, L. (2010) ‘Models of Youth Justice’, in D. Smith (ed.) *A New Response to Youth Crime*. Willan.

McAra, L. (2018) ‘Child-friendly youth justice?’, *Child-friendly youth justice? A compendium of papers given at a conference at the University of Cambridge in September 2017*. NAYJ-Child-friendly-youth-justice-May-18.pdf (thenayj.org.uk) [accessed May 2019].

McAra, L. and McVie, S. (2007) ‘Youth Justice? The Impact of System Contact on Patterns of Desistance from Offending’, *European Journal of Criminology*, vol. 4(3), pp. 315-345.

McAra, L. and McVie, S. (2010) ‘Youth crime and justice: Key messages from the Edinburgh Study of Youth Transitions and Crime’, *Criminology and Criminal Justice*, vol.10(2), pp.179-204.

McGuinness, T. (2016) *The Age of Criminal Responsibility*. Briefing Paper. Available online: https://dera.ioe.ac.uk/27170/2/CBP-7687_Redacted.pdf [accessed 06/01/2019]

McGuire, J (2010) *Comparing coercive and non-coercive interventions*. Centre for Crime and Justice Studies.

McKeganey, N. and Bloor, M. (1991) ‘Spotting the Invisible Man: The Influence of Male Gender on Fieldwork Relations’, *The British Journal of Sociology*, vol. 42(2), pp. 195-210.

Mduluza, T., Midzi, N., Duruza, D. and Ndebele, P. (2013) ‘Study participants incentives, compensation and reimbursement in resource-constrained settings’; *BMC Medical Ethics, vol.*14(1)

https://bmcmedethics.biomedcentral.com/articles/10.1186/1472-6939-14-S1-S4 [accessed May 2017]

Michael, A. (2018) *Submission to the Commission on Justice in Wales*. Available online: https://gov.wales/sites/default/files/publications/2018-08/Submission-alun-michael-police-and-crime-commissioner-south-wales.pdf [accessed 27.03.2020]

Miller, A. (2018) *Recommendations for a new human rights framework to improve people's lives.* Available online: https://humanrightsleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf [accessed 01.04.2020]

Milligan, L. (2014) 'Insider-outsider-inbetweener? Researcher positioning, participative methods and cross-cultural educational research'; *Compare: A Journal of Comparative and International Education*, vol. 46(2), pp. 235-250.

Ministry of Justice (2016) *The government response to Charlie Taylor's Review of the Youth Justice System*. Available online: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/576554/youth-justice-review-government-response-print.pdf [accessed 18.02.2019]

Ministry of Justice (2020) *A Smarter Approach to Sentencing*. London: Ministry of Justice.

Ministry of Justice and Welsh Government (2019) *Youth Justice Blueprint for Wales*. Cardiff: Welsh Government.

Ministry of Justice and Youth Justice Board (2010) *Youth justice annual statistics: 2008 to 2009: Workload tables*. London: Ministry of Justice and Youth Justice Board.

Ministry of Justice and Youth Justice Board (2011) *Youth Justice Annual Statistics 2009 to 2010: workload tables*. London: Ministry of Justice and Youth Justice Board.

Ministry of Justice and Youth Justice Board (2012) *Youth Justice Annual Statistics 2010-11: local level data*; London: MoJ and YJB

Ministry of Justice and Youth Justice Board (2013) *National Standards for youth justice services*. London: MoJ and YJB.

Ministry of Justice and Youth Justice Board (2013b) *Youth Justice Annual Statistics 2011-12: local level data*; London: MoJ and YJB

Ministry of Justice and Youth Justice Board (2014) *Youth Justice Annual Statistics 2012-13: local level data*; London: MoJ and YJB

Ministry of Justice and Youth Justice Board (2015) *Referral Order Guidance: 2015*. London: Youth Justice Board.

Ministry of Justice and Youth Justice Board (2015b) *Youth Justice Annual Statistics 2013-14: local level data*; London: MoJ and YJB

Ministry of Justice and Youth Justice Board (2016) *Youth Justice Annual Statistics 2014-15: local level data*; London: MoJ and YJB

Ministry of Justice and Youth Justice Board (2017a) *Youth Justice Statistics Glossary*. London: Ministry of Justice and Youth Justice Board.

Ministry of Justice and Youth Justice Board (2017b) *Youth Justice Annual Statistics 2015-16: local level data*; London: MoJ and YJB

Ministry of Justice and Youth Justice Board (2018) *Referral Order Guidance: October 2018*. London: Youth Justice Board.

Ministry of Justice and Youth Justice Board (2019a) *Standards for children in the youth justice system 2019*. London: Youth Justice Board.

Ministry of Justice and Youth Justice Board (2019b) *Youth Custody Data: November 2018*. London: Ministry of Justice and Youth Justice Board.

Ministry of Justice and Youth Justice Board (2019c) *Youth Justice Statistics 2017/18 England and Wales.* London: MoJ and YJB.

Ministry of Justice and Youth Justice Board (2020a) *Youth Justice Statistics 2018/19 England and Wales.* London: MoJ and YJB.

Ministry of Justice and Youth Justice Board (2020b) *Youth justice statistics: 2018 to 2019: local level pivot tables*. London: MoJ and YJB.

Ministry of Justice and Youth Justice Board (2020c) *Youth custody data: April 2020*. London: MoJ and YJB.

Ministry of Justice and Youth Justice Board (2021) *Youth custody report: April 2021*. London: MoJ and YJB.

Ministry of Justice, Youth Justice Board, HMPPS and Youth Custody Service (2020) *A Guide to Youth Justice Statistics.* London: MoJ.

Morgan, D. (1998) *Planning Focus Groups*. Thousand Oaks, CA: Sage.

Morgan, R. and Newburn, T. (2012) 'Youth crime and justice: rediscovering devolution, discretion, and diversion?', in R. Morgan, M. Maguire and R. Reiner (eds), *Oxford Handbook of Criminology*. Oxford: Oxford University Press.

MORI (2009) *Youth Survey 2008: Young People in Mainstream Education.* London: Youth Justice Board.

Morrow, V. (2009) *The Ethics of Social Research with Children and Families in Young Lives: Practical Experiences.* Oxford: Young Lives.

Munford, R. and Sanders, J. (2015) 'Young people's search for agency: Making sense of their experiences and taking control', *Qualitative Social Work*, vol.14(5), pp.616-633.

Muncie, J. (2004) Youth Crime: A Critical Introduction (2nd Edition). London: Sage.

Muncie, J. (2006) 'Responsibilisation and rights: explorations in comparative youth criminology', *Howard Journal of Criminal Justice*, vol. 45(1), pp. 42–70.

Muncie, J. (2011) 'Illusions of difference: comparative youth justice in the devolved United Kingdom', *British Journal of Criminology*, vol. 51(1), pp. 40–57.

Nacro (2003) *A Failure of Justice: Reducing Child Imprisonment*. London: Nacro.

Nacro Cymru (2009) *Youth justice and participation in Wales*. Available online: https://www.bl.uk/collection-items/youth-justice-and-participation-in-wales [accessed 15.05.2019]

National Association of Probation Officers (1992) *CJA 1991 and National Standards: Limiting the damage*. London: NAPO.

National Association for Youth Justice (NAYJ) (2019) *Manifesto 2019/2020*. Available online: https://thenayj.org.uk/manifesto-2019-final.pdf [accessed 16.08.2020]

National Children's Bureau (2011) *Guidelines for Research with Children and Young People.* https://www.ncb.org.uk/sites/default/files/field/attachment/NCB%20guidelines%20CYP.pdf [accessed May 2017]

National Police Chiefs' Council (2015) *Child-centred Policing: National Strategy for the Policing of Children and Young People*. NPCC: London

Ochieng, B. (2010) '"You Know What I Mean:" The Ethical and Methodological Dilemmas and Challenges for Black Researchers Interviewing Black Families'. *Qualitative Health Research*, vol. 20(12), pp. 1725-1735.

Petronsino, A., Turpin-Petronsino, C. and Guckenburg, S. (2010) *Formal system processing of juveniles: effects on delinquency. Campbell Systematic Reviews*. Oslo: The Campbell Collaboration.

Pitts, J. (1999) ‘New Youth Justice, New Youth Crime’, *Criminal Justice Matters*, vol.38, pp. 24-25.

Pitts J (2001) ‘Korrectional Karaoke: New Labour and the Zombification of Youth Justice’, *Youth Justice*, vol.1(2), pp.3 – 16.

Platt, A. (2002) ‘The Triumph of Benevolence: The origins of the juvenile justice system in the United States’, in J. Muncie, G. Hughes and E. McLaughlin (ed.), *Youth Justice: Critical Readings.* London: Sage.

Potter, J. (1997) ‘Discourse Analysis as a Way of Analysing Naturally Occurring Talk’ in D. Silverman (ed.), *Qualitative Research: Theory, Method and Practice*; London: Sage.

Pratt, J. (1985) ‘Juvenile Justice, Social Work and Social Control. The Need for Positive Thinking’, *The British Journal of Social Work*, vol. 15(1), pp. 1–24.

Prior, L. (2011) *Using Documents and Records in Social Research*; London: Sage.

Prior, L. (2016) ‘Using Documents in Social Research’, in Silverman, D. (ed.) *Qualitative Research*. London: Sage.

Prout, A. (2000) ‘Children’s Participation: Control and Self-Realisation in British Late Modernity’, *Children & Society*, vol.14, pp. 304–315.

Public Health Wales (2015) Adverse Childhood Experiences and their impact on health-harming behaviours in the Welsh adult population. Available online: http://www2.nphs.wales.nhs.uk:8080/PRIDDocs.nsf/7c21215d6d0c613e80256f490030c05a/d488a3852491bc1d80257f370038919e/$FILE/ACE%20Report%20FINAL%20(E).pdf [accessed 23.11.2019]

Qvortrup, J. (ed.) (1987) *The sociology of childhood*. New York: ME Sharpe.

Qvortrup, J. (1994) ‘Childhood Matters: An Introduction’, in J. Qvortrup, M. Bardy, G. Sgritta, and H. Wintersberger (eds.), *Childhood Matters: Social theory, Practice and Politics*. Aldershot: Avebury.

Qvortrup, J. (2005) 'Varieties of Childhood', in J. Qvortrup (ed.) *Studies in Modern Childhood: Society, Agency, Culture*. Basingstoke: Palgrave Macmillan, pp. 1–21.

Rahman, P. and Rendell, T. (2012) *Youth Court Guide (5th Edition)*. London: Bloomsbury.

Rahman, P. and Rendell, T. (2017) *Youth Court Guide (6th Edition*). London: Bloomsbury.

Rawlings, R. (2003) *Wales: Constitutional, Legal and Administrative Aspects of National Devolution*. Cardiff: University of Wales Press.

Rew, L., Taylor-Seehafer, M. and Thomas, N. (2000) 'Without Parental Consent: Conducting Research with Homeless Adolescents', *Journal of Society of Pediatric Nurses*, vol. 5(3), pp. 131-138.

Richard Commission (2004) *Report of the Richard Commission*, Commission on the Powers and Electoral Arrangements of the National Assembly for Wales, Spring 2004.

Roberts, I. (2012) 'Adolescence', in P. Zwozdiak-Mayers (Ed.), *Childhood and Youth Studies Series: Childhood and youth studies* (pp. 85-96). London: Learning Matters.

Robinson, A. (2015) The resilience motif: Implications for youth justice, *Youth Justice*, vol. 16(1), pp.18-33.

Robinson, G. and McNeill, F. (2008) 'Exploring the dynamics of compliance with community penalties', Theoretical Criminology, vol. 12(4), pp. 431-449.

Robinson, G. and McNeill, F. (2012) 'The dynamics of compliance with offender supervision', in. F. McNeill, Raynor, P. and Trotter, C. (eds) *Offender Supervision: New directions in theory, research and practice.* Abingdon: Routledge.

Roe, S. and Ashe, J. (2008) *Young People and Crime: Findings from the 2006 Offending, Crime and Justice Survey.* London: Home Office.

Rorty, R. (1993) ‘Human Rights, Rationality, and Sentimentality’, in S. Shute and S. Hurley (eds) *On Human Rights: The Oxford Amnesty Lectures 1993*. London: Basic Books.

Roulston, K. (2010) *Reflective interviewing: A guide to theory and practice*. London: Sage.

Rutherford, A. (1985) *Growing Out of Crime*. London: Penguin.

Rutherford, A. (1992) *Growing Out of Crime – The New Era.* Winchester: Waterside Press.

Ryan, P. and Dundon, T. (2008) ‘Case research interviews: eliciting superior quality data’, *International Journal of Case Method Research & Application*, vol. 20(4), pp. 443-450.

Save the Children (2007) *Stop, look, listen: The road to realising children’s rights in Wales*. Cardiff: Save the Children.

Schama, S. (1987) *The Embarrassment of Riches: An Interpretation of Dutch Culture in the Golden Age*; London: Fontana.

Schweiger, G. and Graf, G. (2015) *A Philosophical Examination of Social Justice and Child Poverty*. London: Palgrave Macmillan.

Select Committee on Home Affairs (1998) *Alternatives to Prison Sentences: Third Report*. Available at: https://publications.parliament.uk/pa/cm199798/cmselect/cmhaff/486/48602.htm [accessed 03.04.2020]

Sen, A. (1985) ‘Well-Being, Agency and Freedom: The Dewey Lectures 1984’, *The Journal of Philosophy*, vol. 82(4), pp.169 – 221.

Sen, A. (2009) *The Idea of Justice*. London: Allen Lane.

Sentencing Council (2017) *Sentencing Children and Young People Overarching Principles and Offence Specific Guidelines for Sexual Offences and Robbery Definitive Guideline*.

Available online: https://www.sentencingcouncil.org.uk/wp-content/uploads/Sentencing-Children-and-Young-People-definitive-guideline-Web.pdf [accessed 19.01.2020]

Sentencing Guidelines Council (2009) *Overarching Principles – Sentencing Youths Overarching Principles – Sentencing Youths: Definitive Guideline.* Available online: https://www.sentencingcouncil.org.uk/wp-content/uploads/web_overarching_principles_sentencing_youths.pdf [accessed 19.01.2020]

Shelter Cymru (2015) *Unsuitable: People's experiences of temporary accommodation in Wales.* Available online: https://sheltercymru.org.uk/wp-content/uploads/2015/02/Unsuitable-People's-experiences-of-temporary-accommodation-in-Wales.pdf [accessed 01/02/2019]

Skelton, T. (2008) 'Research with Children and Young People: Exploring the Tensions Between Ethics, Competence and Participation', *Children's Geographies,* vol. 6 (1), pp. 21-36.

Skuse, T. & Matthew, J. (2015). 'The Trauma Recovery Model: Sequencing Youth Justice Interventions for Young People with Complex Needs'. *The Prison Service Journal,* vol.220, pp.16-25.

Smith, R. (2006) 'Actuarialism and early Intervention in Contemporary Youth Justice', in Goldson, B. and Muncie, J. (eds), *Youth Crime and Justice*. London: Sage.

Smith, R. (2014) 'Towards a 'welfare + rights' model in youth justice', *Critical and Radical Social Work,* vol. 2(3), pp. 287-303.

Smith, R. (2018) 'Reconsidering Value Perspectives in Child Welfare', *The British Journal of Social Work,* vol.48(3), pp. 616–632.

Smith, R. (2020) 'Diversion, Rights and Social Justice', *Youth Justice,* available online: https://doi.org/10.1177/1473225420902845 [accessed 18.04.2020]

Smith, R. and Gray, P. (2019) 'The Changing Shape of Youth Justice: Models of Practice', *Criminology and Criminal Justice*, vol. 19(5), pp. 554-571.

Smithson, H., Gray, P. and Jones, A. (2020) ''They Really Should Start Listening to You': The Benefits and Challenges of Co-Producing a Participatory Framework of Youth Justice Practice', *Youth Justice*, pp.1-17.

Social Research Association (2003) *Ethical Guidelines;* http://the-sra.org.uk/wp-content/uploads/ethics03.pdf [accessed May 2017]

Souhami A (2007) *Transforming Youth Justice Occupational Identity and Cultural Change*. Willan.

Souhami, A. (2015) 'Creating the Youth Justice Board: Policy and policy making in English and Welsh youth justice', *Criminology and Criminal Justice*, vol. 15(2), pp. 152-168.

Strauss, A. (1987) *Qualitative Analysis for Social Scientists.* Cambridge: Cambridge University Press.

Strauss, A. and Corbin, J. (1998) *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory*; Thousand Oaks, CA: Sage

Talbot, J. (2010) *Seen and Heard: Supporting Vulnerable Children in the Youth Justice System*. Prison Reform Trust.

Taylor, C. (2016) *Review of the Youth Justice System in England and Wales by Charlie Taylor*. London: Ministry of Justice.

Taylor, R., Evans, J., Stuart-Hamilton, I., Roderique-Davies, G., Pierpoint, H. and Bartlett, H. (2015) *A Review of the Speech, Language and Communication Needs of Young People from Wales in the Youth Justice System*. Available online: https://www.justice.gov.uk/youth-justice/effective-practice-library/speech,-language-and-communication-needs-of-young-people-in-the-yjs [accessed 29.04.2020]

The Howard League for Penal Reform (2010) *Life Inside: A unique insight into the day to day experiences of 15-17 year old males in prison*. London: The Howard League for Penal Reform.

Thomas, S. (2015) 'Children First, Offenders Second: an aspiration or reality for youth justice in Wales.' Doctoral Thesis. Available online: https://uobrep.openrepository.com/bitstream/handle/10547/622111/Children%20First%20Offender%20Second%20Sue%20Thomas%20%202015.pdf?sequence=1&isAllowed=y [accessed 17.03.2020]

Thorne, B. (1993) *Gender Play: Girls and Boys in School*. Buckingham: Open University Press.

Thorpe, D., Smith, D., Green, C. and Paley, J. (1980) *Out of Care – The Community Support of Juvenile Offenders*. London:

Tizard, B. and Hughes, M. (2002) *Young Children Learning* (2nd edition); Oxford: Wiley-Blackwell.

Torrance, D. (2018) *"A process, not an event": Devolution in Wales, 1998-2018*. Briefing Paper. Available online: https://researchbriefings.files.parliament.uk/documents/CBP-8318/CBP-8318.pdf [accessed 25.10.2019]

Towler, K. (2006) Letter from Keith Towler to Jenny Randerson. 15 September 2006 Cardiff: WAG. Available online: http://www.assembly.wales/NAfW%20Documents/children.pdf%20-%2001052007/children-English.pdf#search=uncrc%202004 [accessed 02/01/2019]

Treanor, M. (2019) 'ACEs – repackaging old problems in shiny new (Emperor's) clothes'. Online blog: https://blogs.ed.ac.uk/CRFRresilience/2019/08/01/repackaging-old-problems/ [accessed 06.01.2020]

Ugwudike, P. (2011) 'Mapping the interface between contemporary risk-focused policy and frontline enforcement practice', *Criminology and Criminal Justice*, vol. 11(3), pp. 242-258.

Ugwudike, P. (2012) ‘Compliance with community penalties: the importance of interactional dynamics’, in F. McNeill, P. Raynor and C. Trotter (eds.) *Offender Supervision: New directions in research and practice*. Abingdon: Routledge.

Ugwudike, P. and Morgan, G. (2019) ‘Bridging the gap between research and frontline youth justice practice’, *Criminology & Criminal Justice*, vol. 19(2), pp. 232–253.

Ugwudike, P. and Raynor, P. (2013) ‘Conclusion: What works in offender compliance’, in *What Works in Offender Compliance*. Basingstoke: Palgrave Macmillan.

UK Children’s Commissioners (2016) *UN Committee on the Rights of the Child, Examination of the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland: UK Children’s Commissioners’ Recommendations May 2016*. Available online: https://www.niccy.org/media/2461/uk-childrens-commissioners-final-recommendations-crc-examination-of-the-uk-2016.pdf [accessed 03.01.2020]

UK Government (2012) *Devolution: memorandum of understanding and supplementary agreements*. London: Cabinet Office.

UN Committee on the Rights of the Child (2008) *Consideration Of Reports Submitted By States Parties Under Article 44 Of The Convention – Concluding Observations: United Kingdom Of Great Britain And Northern Ireland*. Available online: https://www.refworld.org/docid/4906d1d72.html
[accessed 25 April 2020]

UN Committee on the Rights of the Child (2016) *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*. Available online: https://www.unicef.org.uk/babyfriendly/wp-content/uploads/sites/2/2016/08/UK-CRC-Concluding-observations-2016-2.pdf [accessed 25 April 2020]

United Nations General Assembly (1989) *United Nation’s Convention on the Rights of the Child (UNCRC)*. Geneva: United Nations.

Vanderbeck, R. (2005) ‘Masculinities and Fieldwork: Widening the discussion’; *Gender, Place & Culture: A Journal of Feminist Geography*, vol. 12(4), pp. 387-402.

Wales UNCRC Monitoring Group (2016) *72nd Session of the Committee on the Rights of the Child UK State Party Hearing Under the Convention on the Rights of the Child, 23 and 24 May 2016: Supplementary Report to the Committee from the Wales UNCRC Monitoring Group.* Available online: https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/GBR/INT_CRC_NGO_GBR_23790_E.pdf [accessed 23.03.2020]

Wales Office (1997) *A Voice for Wales: A summary of the Government’s proposals for a Welsh Assembly*. London: The Stationery Office.

Walsh, D., McCartney, G., Smith, M. and Armour, G. (2019) ‘Relationship between childhood socioeconomic position and adverse childhood experiences (ACEs): a systematic review’, *Journal of Epidemiology & Community Health*, vol. 73(12), pp. 1087–1093.

Wardhaugh, J. (2000) ‘Fieldwork Amongst Street Homeless People’, in King, R. & Wincup, E. (eds.) *Doing Research on Crime and Justice*. Oxford: Oxford University Press.

Warren, C. (1988) *Gender issues in field research*; Newbury Park, CA: Sage Publications.

Wax, R. (1979) ‘Gender and age in fieldwork and fieldwork education: no good thing is done by any man alone’; *Social Problems* 26(5): 509-522

Webb, C. (1992) ‘The Use of First Person in Academic Writing: Objectivity, Language and Gatekeeping’, *Journal of Advanced Nursing*, vol.17, pp. 747-752.

Weber, M. (1947) *The Theory of Social and Economic Organization*, translated by A.M. Henderson and T. Parsons; New York: Free Press.

Welsh Assembly Government (2000a) *Children and Young People: A Framework for Partnership*. Cardiff: Welsh Assembly Government.

Welsh Assembly Government (2000b) *Extending Entitlement: Supporting Young People in Wales*. Cardiff: National Assembly Policy Unit.

Welsh Assembly Government (2002) *Extending Entitlement: support for 11 to 25 year olds in Wales: Direction and Guidance*. Cardiff: Welsh Assembly Government.

Welsh Assembly Government (2004) *Children and Young People: Rights to Action*. Cardiff: Welsh Assembly Government.

Welsh Assembly Government (2005) *A Fair Future for our Children: The Strategy of the Welsh Assembly Government for Tackling Child Poverty*. Cardiff: Welsh Assembly Government.

Welsh Assembly Government (2006) *Safeguarding Children: Working Together Under the Children Act 2004*. Cardiff: Welsh Assembly Government.

Welsh Assembly Government (2007a) *Rights in Action: Implementing children and young people's rights in Wales*. Cardiff: Welsh Assembly Government.

Welsh Assembly Government (2007b) *Young people, youth work, Youth Service: National Youth Service Strategy for Wales (2007)*. Cardiff: Welsh Assembly Government.

Welsh Assembly Government (2009) *Getting it Right: United Nations' Convention on the Rights of the Child*. Cardiff: Welsh Assembly Government.

Welsh Assembly Government (2010) *Statutory Guidance: Provision of accommodation for 16 and 17 year old young people who may be homeless*. Cardiff: WAG.

Welsh Assembly Government and Youth Justice Board (2004) *All-Wales Youth Offending Strategy*. Cardiff: Welsh Assembly Government and Youth Justice Board.

Welsh Assembly Government and Youth Justice Board (2009) *All-Wales Youth Offending Strategy: Delivery Plan 2009-11*. Cardiff: Welsh Assembly Government and Youth Justice Board.

Welsh Government (2011) *Rights of Children and Young Persons (Wales) Measure 2011*. Cardiff: Welsh Government.

Welsh Government (2014) *The National Youth Work Strategy for Wales 2014–2018 (2014).* Cardiff: Welsh Government.

Welsh Government (2015) *The Homelessness (Suitability of Accommodation) (Wales) Order 2015*. Cardiff: Welsh Government.

Welsh Government (2016a) *The Social Services and Well-being (Wales) Act 2014: Part 6 Code of Practice (Looked After and Accommodated Children).* Cardiff: Welsh Government.

Welsh Government (2016b) *Code of Guidance for Local Authorities on the Allocation of Accommodation and Homelessness*. Cardiff: Welsh Government.

Welsh Government (2018) *Our Future: A review of Extending Entitlement*. Cardiff: Welsh Government.

Welsh Government (2019a) *Children's Rights in Wales*. Available online: https://gov.wales/childrens-rights-in-wales [accessed 25.02.2020]

Welsh Government (2019b) Statistics: Young people not in education, employment or training (NEET): Tables: Year to 30 September 2018. Available online: https://gov.wales/statistics-and-research/young-people-not-education-employment-training/?lang=en [accessed 23.06.2019]

Welsh Government and Youth Justice Board (2014) *Children and young people first: Welsh Government / Youth Justice Board joint strategy to improve services for young people in Wales at risk of becoming involved in, or in, the youth justice system*. Cardiff: Welsh Government and Youth Justice Board.

Welsh Local Government Association (2018) 'Children's Services in Wales at 'breaking point' and need urgent investment'. Available online: https://www.wlga.wales/childrens-services-in-wales-at-breaking-point-and-need-urgent-investment [accessed 03.03.2019]

Wendler, D., Rackoff, J.E., Emanuel, E.J. and Grady, C. (2002) 'The ethics of paying for children's participation in research' http://nnhvip.org/wp-content/uploads/2013/10/Wendler_Rackoff_Emanuel_Grady_2002.pdf

Williams, K. (2018) *Submission to the Justice Commission from Professor Kate Williams (University of South Wales and Welsh Centre for Crime and Social Justice*). Available online: https://gov.wales/sites/default/files/publications/2018-07/Submission-to-the-justice-commission-from-professor-kate-williams.pdf [accessed 17.02.2020]

Williams, K. and Felizer, M. (2013) 'Welsh Devolution and Civil Society: Shaping the Future?', *European Journal of Current Legal Issues*, vol. 19(4). Available online: http://webjcli.org/article/view/273/400 [accessed 13.01.2019]

Winterdyk, J. (2002) *Juvenile Justice Systems: International Perspectives*. Canadian Scholars Press.

Winterdyk, J. (2005) 'Juvenile Justice in the International era', in Reichel P. (ed.) *Handbook of Transnational Crime and Justice*. Thousand Oaks: Sage.

Wolbransky, M., Goldstein, N., Giallella, C. and Heilbrun, K. (2013) 'Collecting Informed Consent with Juvenile Justice Populations: Issues and Implications for Research', *Behavioural Sciences and the Law,* vol. 31(4), pp. 457-476.

Yates, J. (2012) 'What Prospects Youth Justice? Children in Trouble in the Age of Austerity', *Social Policy Administration,* vol. 46(4), pp. 432-447.

Yin, R. K. (2009) *Case study research: Design and methods (4th ed.)*. Washington, DC: Sage.

YOT Managers Cymru (2018) Submission to the Justice Commission from YOT Managers Cymru. Available online: https://gov.wales/sites/default/files/publications/2018-06/Submission-yot-managers-cymru.pdf [accessed 12.01.2019]

Youth Justice Board (2000) *National Standards for Youth Justice Services*. London: YJB.

Youth Justice Board (2004) *National Standards for Youth Justice Services*. London: YJB.

Youth Justice Board (2010) *A Review of Techniques for Effective Engagement and Participation*. London: YJB.

Youth Justice Board (2010b) *National Standards for Youth Justice Services*. London: YJB.

Youth Justice Board (2014) *Case management guidance*. London: YJB.

Youth Justice Board (2015) *Joint protocol between YOTs and electronic monitoring services.* London: YJB.

Youth Justice Board (2016) *Revised Unpaid Work Operating Briefing for 16/17 Year olds (Dec 2016)*. London: Youth Justice Board.

Youth Justice Board (2018) *Youth Justice Board for England and Wales Strategic Plan 2018-2021.* London: Youth Justice Board.

Youth Justice Board (2019a) *Youth Justice Board for England and Wales: Business plan 2019-2020*. London: Youth Justice Board.

Youth Justice Board (2019b) *Case management guidance. Custody and resettlement: section 7.* London: Youth Justice Board.

Appendix 1: Welsh Devolution

Following the affirmative vote in the second referendum on Welsh devolution in 1997 (albeit on low turnout and a very narrow margin of 0.6 per cent), the *Government of Wales Act 1998* provided the first of many Welsh devolution settlements to come. This Act created the National Assembly for Wales (NAW) as a single body, incorporating both, but with no clear separation between, an executive and a legislature (Rawlings, 2003). The transfer of some ministerial functions (primarily those of the Secretary of State for Wales) to the NAW meant that it had some executive responsibility for the 20 policy fields set out in the Labour (UK) government's White Paper, *A Voice for Wales* (Wales Office 1997). Primary legislation, however, remained entirely the prerogative of Westminster.

This changed in 2007, when the provisions of the *Government of Wales Act 2006* (GOWA 2006) came into effect. Following the recommendation of the Richard Commission (2004), which examined the NAW's powers and electoral arrangements, the GOWA 2006 formally separated the executive (Welsh Assembly Government, or WAG) and legislature (NAW) as individual entities. It also granted the NAW new powers to pass some primary laws (known as 'Assembly Measures') through 'Legislative Competence Orders', though this was on a case-by-case basis and required the consent of both Houses of Parliament and the Secretary of State for Wales (Torrance, 2018). Further, the NAW's legislative competence was limited to the 20 fields specified in schedule 5 of the Act. Part 4 of the Act, however, provided for further devolution of primary law-making powers (in the form of 'Assembly Acts'), subject to another referendum. A referendum was held on the 3rd of March 2011, where the question was put to voters in Wales: "Do you want the Assembly now to be able to make laws on all matters in the 20 subject areas it has powers for?". This time, turnout was even lower than in the 1997 vote. Of the 35.6 per cent of the Welsh electorate who voted, 63.49 per cent answered "yes" (Wyn Jones and Scully, 2012). The NAW assumed its new powers on the 5th of May 2011.

Wales' devolution settlement has since changed again, with the 'conferred powers model' of the *Wales Act 2014* and the 'reserved powers model' of the *Wales Act 2017* both modifying[113] the NAW's powers. Today, the NAW – or 'Senedd Cymru' (Welsh Parliament), as it was re-named in May 2020 – can legislate on any matter not reserved to the UK Parliament (UKP). However, three important distinctions should be borne in mind:

[113] The choice of the word 'modifying' is deliberate, as commentators are mixed in their views as to whether these Acts have enhanced or restricted the NAW's powers – see for example Geldards Law Firm, 2017 https://www.geldards.com/wales-act-2017.aspx; Wyn Jones, 2016 www.walesonline.co.uk/news/politics/richard-wyn-jones-bill-12091891; BBC News, 2017 www.bbc.co.uk/news/uk-wales-politics-38813095

first, the Senedd, unlike the UKP, which is sovereign,[114] remains governed by statute. Its power to legislate is dictated by Westminster and extends only to matters which have not been reserved to the UKP. Second, any laws which are created by the Senedd pertain only to Wales. The UKP can legislate for Wales but the Senedd cannot create laws for the UK. Third, while the provision in the GOWA 2006 (and its reiteration in the *Wales Act 2017*) for the statutory recognition of the Sewel Convention renders it unlikely that the UKP would legislate on devolved matters, especially without the consent of the Senedd, it does not prohibit the UKP from so doing. As stated in the 2012 Memorandum of Understanding between the UK Government and the devolved administrations, "The United Kingdom Parliament retains authority to legislate on any issue, whether devolved or not. It is ultimately for Parliament to decide what use to make of that power." (UK Government, 2012: para. 14).

Wales, therefore, like Scotland and Northern Ireland, remains governed by two legislatures and two executives – the UK Parliament and Senedd Cymru, and the UK Government and the Welsh Government. However, unlike Scotland and Northern Ireland, Wales does not have a separate judiciary. She is part of the single legal jurisdiction of England and Wales. Legislation made for Wales by both the UKP and the Senedd is subject to interpretation and application by this single judiciary.

[114] Although until the recent passing of *The European Union (Withdrawal Agreement) Act 2020*, EU law took precedence over UK law.

Appendix 2: Custodial sentences other than Detention and Training Order

Section 90: Children convicted of murder will be given a life sentence under section 90 of the *Powers of Criminal Courts (Sentencing) Act 2000*. The court sets a minimum term which must be served in custody, starting at 12 years.

Section 91: Children can receive a long-term custodial sentence under section 91 of the *Powers of Criminal Courts (Sentencing) Act 2000* if they are convicted of an offence for which an adult of 21 years or over could receive a custodial sentence of 14 years or more, or if they commit certain sexual or firearms offences, and a lesser sentence will not suffice.

Section 226: Children can be sentenced to an indeterminate custodial sentence under section 226 of the *Criminal Justice Act 2003* if they are convicted of a serious offence and the court has assessed them as being dangerous. A serious offence is an offence listed in schedule 15 of the *Criminal Justice Act 2003* for which an adult could receive a custodial sentence of 10 years or more**.**

Section 226B: Children can be sentenced to an extended custodial sentence under section 226B of the *Criminal Justice Act 2003* if they are convicted of a specified offence as listed in schedule 15 of the *Criminal Justice Act 2003* and the court believes that they are dangerous.

Appendix 3: Specific Order Requirements

Order Type	Available statutory requirements	Mandatory / Optional	Length of Order	Who decides?
Reparation Order	Up to 24 hours of reparation work	Mandatory	Must be completed within 3 months	Magistrates / Judge
Referral Order	**(a)** Reparation work (to the victim and/or the wider community) **(b)** A programme of interventions (delivered or organised by the YOT), which may include: **(c)** Education, training or employment **(d)** Victim awareness **(e)** Restorative processes *(e.g. writing a letter of explanation or apology, shuttle mediation (messages passed between the child and victim(s), direct restorative interventions*) **(f)** Offending behaviour work **(g)** Work on interpersonal skills (*work to support the factors which increase resilience and desistance*) **(h)** Curfew (*this cannot be electronically monitored on a Referral Order*).	Mandatory Mandatory Optional Optional Optional Optional Optional Optional	Up to 12 months	Referral Order Panel (*also known as 'Youth Offender Panel').*
Youth Rehabilitation Order	**(a)** Supervision Requirement (*up to 3 years*); **(b)** Programme Requirement (*no specified limits*); **(c)** Activity Requirement (*up to 90 days*); **(d)** Attendance Centre Requirement (*only for those aged 12 years and above)*; **(e)** Curfew Requirement *(minimum of 2 hours per day, maximum of 16. Duration of curfew requirement must not exceed 12 months);* **(f)** Education Requirement *(only available to children of statutory school age);* **(g)** Residence Requirement *(child must be aged 16 years or above);* **(h)** Local Authority Residence Requirement *(maximum of 6 months);* **(i)** Drug Treatment Requirement; **(j)** Drug Testing Requirement; **(k)** Mental Health Treatment Requirement; **(l)** Intoxicating Substance Treatment Requirement; **(m)** Exclusion Requirement *(maximum duration of 3 months*); **(n)** Prohibited Activity Requirement (*no specified limits*); **(o)** Unpaid Work Requirement (*between 40 and 240 hours, must be completed within 12 months; only available for children aged 16 or 17 years*); **(p)** Intensive Supervision and Surveillance Requirement (*imposed for between 90 and 180 days as a 'direct alternative to custody'. Must be in addition to supervision requirement and curfew with electronic monitoring*); **(q)** Fostering Requirement (*no more than 12 months*); **(r)** Electronic Monitoring Requirement.	All are optional, but it is unusual not to have a supervision requirement as part of the order.	Up to 3 years (though see limitations to different requirements).	Magistrates / Judge
Detention and Training Orders ('Notice of Supervision' for the period spent in the community)	**(a)** be of good behaviour and not behave in a way which undermines the purpose of the Notice of Supervision period **(b)** not commit any offences **(c)** keep in touch with the supervising officer in accordance with instructions given by the supervising officer **(d)** receive visits from the supervising officer in accordance with instructions given by the supervising officer	There is **no legislation** that outlines specific requirements that must or should be added to a Notice of Supervision.	Maximum length of order (custody + community) is 24 months (half in custody, half in the community).	Youth Offending Team. 'Additional' requirements must be approved by the Youth Custody

	(e) reside permanently at an address approved by the supervising officer and obtain prior permission of the supervising officer for any stay of one or more nights at a different address **(f)** not undertake work, or a particular type of work, unless it is approved by the supervising officer and notify the supervising officer in advance of any proposal to undertake work or a particular type of work **(g)** not travel outside the United Kingdom, the Channel Islands or the Isle of Man expect with prior permission of your supervising officer or for the purposes of immigration, deportation or removal. **(h)** Electronically monitored curfew **(i)** Intensive Supervision and Surveillance (ISS) **(j)** Further conditions relating to the following categories: (1) residence at a specified place; (2) restriction of residency; (3) making or maintaining contact with a person; (4) participation in, or co-operation with, a programme or set of activities; (5) possession, ownership, control or inspection of specified items or documents; (6) disclosure of information; (7) curfew arrangement; (8) freedom of movement.	However, **non-statutory guidance** states that the 'standard' requirements - (a) to (g) - should 'normally' be included, and that 'additional' requirements (h) and (i) and (j) may be considered (YJB, 2014; MoJ and YJB, 2018)	Eligibility for early release may mean that up to two months of the custodial part may be served on licence.[115]	Service Placements Team (for children in secure children's homes or secure training centres), or the Governor of the under-18 young offender institution (YOI) if the child is being released from a YOI.
Unless stated otherwise, all the above information derives from the *National Standards for Youth Justice Services* (MoJ and YJB, 2013) and the *Case Management Guidance* (YJB, 2014) which were in force during the data collection phase of this study. Although they have since been revised (see MoJ and YJB, 2019a, 2019b), the information above remains accurate and up-to-date.				

[115] Those serving DTOs of less than 8 months are not eligible for early release. Those serving DTOs of 8 months or more, but less than 18 months, may be released up to one month before the end of the half-way point of the order; those serving 18 months or more may be released up to two months before the end of the half-way point of the order (section 102 of the *Powers of Criminal Courts (Sentencing) Act 2000*). There is a presumption in favour of early release, unless their behaviour in custody is "seriously violent or disruptive", or their index offence is one of significant gravity (YJB, 2014: section 7: 6.6).

Appendix 4: Freedom of Information Request YJB - response

20th May 2020

Dear Mr Daniel,

Freedom of Information Act Request

Thank you for your email of the 1st of May 2020 in which you asked for information relating to the period April 2014 to March 2019 for the following:

(1) how many children in each of the Youth Offending Team areas in Wales were convicted of breaching:

(a) a Referral Order?

(b) a Reparation Order?

(c) a Youth Rehabilitation Order without an Intensive Surveillance and Supervision requirement?

(d) a Youth Rehabilitation Order with an Intensive Surveillance and Supervision requirement?

(e) a Detention and Training Order?

(f) licence conditions for a section 90/91 offence?

(g) licence conditions for a section 226 offence?

(2) what was the total number of children across England and Wales who were convicted of breaching one or more of the criminal justice sentences identified above?

(3) how many proven offences were recorded in each of the Youth Offending Team areas in Wales for failures to comply with each of the criminal justice sentences identified above?

(d) what was the total number of proven offences across England and Wales for failures to comply with each of the criminal justice sentences identified above?

The Youth Justice Board only collects data on breach offences and not the type of orders that were breached. Therefore, we can only provide you with an answer to the part of your query relating to the number of breach offences given to children. Please see the accompanying spreadsheet on breach offences for the figures concerned.

If you are dissatisfied with this response you may request an independent internal review of any aspect of our handling of your application. This can be done by submitting your review request to:

Stephanie Roberts-Bibby

Chief Operating Officer

Youth Justice Board

Clive House

70 Petty France

London

SW1H 9EX

Or by email at: yjb.enquiries@yjb.gov.uk

Should you remain dissatisfied after this internal review, you will have a further right of complaint to the Information Commissioner.

Yours sincerely,

Appendix 5: Response by YJB to query about breach of statutory order category

From: YJB Information and Analysis Team <informationandanalysis@yjb.gov.uk>
Tue 19/03/2019 21:22

Hi [redacted],

Below are the offences that are mapped to the Breach of Statutory Order offence group.

Breach a criminal behaviour order
Individual fail to comply with a community protection notice
Breach of an anti-social behaviour injunction
Failed to comply with an anti-social behaviour injunction supervision order
Breach of a parenting order
Breach of Reparation Order
Recall to prison after release on licence which is revoked
Recall to prison after early release on licence - condition breached
Fail to comply with requirements of post release supervision for young offender
Remain unlawfully at large after recall to prison - Criminal Justice Act 2003
Failing to comply with the community requirements of a suspended sentence order
Commission of a further offence during the operational period of a suspended sentence order
Fail to comply with the requirements of a community order
Failed to comply with the requirements of post-custodial supervision
Breach of a supervision default order
Failing to comply with the requirements of a youth rehabilitation order
Failing to comply with the requirements of a youth rehabilitation order with fostering
Failing to comply with the requirements of a youth rehabilitation order with intensive supervision and surveillance
Breach of european supervision measures
Fail to comply with conditions when released on licence after return
Return to UK in contravention of temporary exclusion order
Person subject to temporary exclusion order fail to comply with permitted obligation after return to the UK
Breach of bail conditions whilst awaiting extradition
Breach a Female Genital Mutilation protection order
Fail to comply with court order for Bind Over
Breach of a domestic violence protection order
Failure to comply with Court Order
Breach of a referral order
Reference to court by Youth Offender Panel - Fail to attend meeting
Reference by Youth Offender Panel - Fail to reach agreement or sign record
Reference by Youth Offender Panel - Breach of contract
Reference by Youth Offender Panel - Fail to sign agreement record
Fail to comply with Attendance Centre Order
Fail to comply with Reparation Order
Fail to attend a youth offender panel meeting (parent)
Commission of Further offence whilst subject to a suspended sentence
Commission of Further Offence Before Serving Sentence in Full
Fail to comply with Drug Abstinence Order
Fail to comply with Pre-Sentence Drug Testing Order
Fail to comply the supervision requirements of a detention and training order
Offence during currency of Detention and Training Order
Breach of Gang injunction
Failed to comply with gang injunction supervision order
Breach of Statutory Order (Other) - Other
Breach of a Civil Injunction
Failing to comply with the requirements of an engagement and support order

Regards,

[redacted]
From: YJB Information and Analysis Team <informationandanalysis@yjb.gov.uk>
Wed 20/03/2019 16:35

Hi [redacted],

Please see below. The list I provided showed the offences that are mapped to Breach of Statutory Order – not necessarily all of these have been committed by children but could be.

1. Breach of parenting orders: Given that breaching a parenting order is an offence committed by parents (adults), why is this counted in the youth justice statistics (which record the offences committed by children)?

Parenting Orders can be issued as part of the sentencing of a child, so that's why they've been included here.

2) In the list provided, a whole range of ASB and other civil disposals are mixed in with criminal justice disposals. Does the YJB differentiate at all between breaches of civil and criminal justice disposals?

The YJB doesn't differentiate between these in terms of the Breach of Statutory Order group, however we have access to the actual offence data, so this would be possible for us to do.

3) The Attendance Centre Order was abolished for youths by the Criminal Justice and Immigration Act 2008, so why is it still included? Is it a case of some YOTs recording inaccurately?

It is the case that some YOTs record this information incorrectly. In terms of outcomes though, it gets mapped correctly to the correct outcome within our reporting system (for example someone given a curfew order would be mapped to having a Youth Rehabilitation Order.

Regards,

[redacted]